Mojave Desert
Air Quality Management District

Draft
Staff Report
Proposed Amendments to Various Rules of Regulation XIII – *New Source Review* (Specifically Rules 1302 – *Procedure*, 1305 – *Emissions Offsets* and 1320 – *New Source Review for Toxic Air Contaminants*) and adoption of New Rule 1310 – *Federal Major Facilities and Federal Major Modifications*

For adoption on
August 28, 2006

14306 PARK AVE, VICTORVILLE, CA 92392-2310
PHONE: (760) 245-1661
FAX: (760) 245-2699

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I. PURPOSE OF STAFF REPORT

A staff report serves several discrete purposes. Its primary purpose is to provide a summary and background material to the members of the Governing Board. This allows the members of the Governing Board to be fully informed before making any required decision. It also provides the documentation necessary for the Governing Board to make any findings, which are required by law to be made prior to the approval or adoption of a document. In addition, a staff report ensures that the correct procedures and proper documentation for approval or adoption of a document have been performed. Finally, the staff report provides evidence for defense against legal challenges regarding the propriety of the approval or adoption of the document.

II. EXECUTIVE SUMMARY

On December 31, 2002 the U.S. Environmental Protection Agency (USEPA) promulgated final changes to the requirements for New Source Review (NSR) in Federal nonattainment areas (67 FR 80187). These regulations were immediately challenged by a variety of industry, government and environmental petitioners. The cases were consolidated under State of New York et. al. vs. US Environmental Protection Agency (D.C. Circuit Case #02-1387). On June 24, 2005 the Court issued an opinion affirming various portions of the regulations and invalidating others. A request for reconsideration was filed with and granted by the court. A stay has not been granted as a part of the reconsideration, therefore, the affirmed provisions of the regulation remain in force.

The new federal regulations require that State and Local agencies which contain areas that have been designated nonattainment for any regulated air pollutant submit minimum program elements to comply with the changed regulations on or before January 2, 2006. Since the MDAQMD is designated nonattinment for ozone and classified moderate under the new 8 hour ozone standard as well as nonattainment for PM10 and classified moderate, the MDAQMD must submit a revised NSR program to USEPA.

In 2003 the California Legislature enacted the Protect California Air Act of 2003 (Health & Safety Code §§42500 et seq). This legislation required the retention of NSR requirements that are at least as stringent as those in place as of December 30, 2002 and prohibits changes to certain NSR requirements unless specific findings are made.

In response to both the new Federal regulations and Health & Safety Code (H&S Code) §§42500 et. seq the MDAQMD has developed amendments to Regulation XIII which will comply with both the Federal regulation and state law. The proposed amendments bifurcate the NSR program into a State NSR and a Federal NSR portion. All of the current requirements for State NSR are retained with one exception which was solely Federal in nature. The new Federal NSR portion is primarily contained in proposed Rule 1310 and implements the requirements of the Federal

regulations. Changes are proposed to Rule 1302 to implement the Federal analysis requirements. Changes are proposed to Rule 1320 to conform various cross references to proposed changed citations in Rule 1302.

The net result of the proposed amendments will be that any new facility or modification to a facility will initially be analyzed to determine its emissions change under the State NSR thresholds. Best Available Control Technology and/or Offsets may be required if the emissions are greater than the applicable thresholds found in current Rule 1303. Any modification to a facility requiring BACT and/or Offsets under State NSR will also be required to provide an alternative site analysis unless the Facility submits additional information sufficient to determine that any emissions increase is not greater than or equal to the Federal Significance Thresholds. This determination of the Federal Significance Threshold uses a new calculation procedure found the Federal NSR regulation. In addition, the proposed amendments allow a Federal Major Facility to apply for and receive a Plant-wide Applicability Limit (PAL). A PAL, when implemented, would exempt the Federal Major Facility from the requirement to perform an alternative site analysis so long as a proposed modification remained under the PAL limit. Please note however that a facility with a PAL would still remain subject to the applicable State NSR requirements.

III. STAFF RECOMMENDATION

Staff recommends that the Governing Board of the Mojave Desert Air Quality Management District (District) adopt the proposed amendments to Regulation XIII – *New Source Review* (specifically Rules 1302, 1305 and 1320) and the adoption of proposed new Rule 1310 – *Federal Major Sources and Federal Major Modifications* and approve the appropriate CEQA documentation. This action is necessary to comply with the requirements of newly amended 40 CFR 51.165.

IV. LEGAL REQUIREMENTS CHECKLIST

The findings and analysis as indicated below are required for the procedurally correct amendments to Regulation XIII – *New Source Review* and adoption of new Rule 1310 – *Federal Major Facilities and Federal Major Modifications*. Each item is discussed, if applicable, in Section V. Copies of related documents are included in the appropriate appendices.

FINDINGS REQUIRED FOR RULES & REGULATIONS:

X Necessity

X Authority

X Clarity

X Consistency

X Nonduplication

X Reference

X Public Notice & Comment

X Public Hearing

REQUIREMENTS FOR STATE IMPLEMENTATION PLAN SUBMISSION (SIP):

X Public Notice & Comment

X Availability of Document

X Notice to Specified Entities (State, Air Districts, USEPA, Other States)

X Public Hearing

X Legal Authority to adopt and implement the document.

X Applicable State laws and regulations were followed.

ELEMENTS OF A FEDERAL SUBMISSION:

N/A Elements as set forth in applicable Federal law or regulations.

CALIFORNIA ENVIRONMENTAL QUALITY ACT REQUIREMENTS (CEQA):

N/A Ministerial Action

N/A Exemption

X Negative Declaration

N/A Environmental Impact Report

X Appropriate findings, if necessary.

X Public Notice & Comment

SUPPLEMENTAL ENVIRONMENTAL ANALYSIS (RULES & REGULATIONS ONLY):

X Environmental impacts of compliance.

X Mitigation of impacts.

X Alternative methods of compliance.

OTHER:

X Written analysis of existing air pollution control requirements

X Economic Analysis

X Public Review

V. DISCUSSION OF LEGAL REQUIREMENTS

A. REQUIRED ELEMENTS/FINDINGS

This section discusses the State of California statutory requirements that apply to the proposed amendments to Regulation XIII and adoption of new Rule 1310. These are actions that need to be performed and/or information that must be provided in order to amend the rule in a procedurally correct manner.

1. State Findings Required for Adoption of Rules & Regulations:

Before adopting, amending, or repealing a rule or regulation, the District Governing Board is required to make findings of necessity, authority, clarity, consistency, non-duplication, and reference based upon relevant information presented at the hearing. The information below is provided to assist the Board in making these findings.

a. Necessity:

The proposed amendments to Regulation XIII and adoption of new Rule 1310 are necessary to comply with the provisions of 40 CFR 51.165.

b. Authority:

The District has the authority pursuant to California Health and Safety Code (H & S Code) §40702 to adopt, amend or repeal rules and regulations.

c. Clarity:

The proposed amendments to Regulation XIII and adoption of new Rule 1310 are clear in that they are written so that the persons subject to the Rule can easily understand the meaning.

d. Consistency:

The proposed amendments to Regulation XIII and adoption of new Rule 1310 are in harmony with, and not in conflict with or contradictory to any State law or regulation, Federal law or regulation, or court decisions. By bifurcating the NSR process into State and Federal components the proposed provisions comply with both 40 CFR 51.165 and H&S Code §§42500 et seq.

e. Nonduplication:

The proposed amendments to Regulation XIII and adoption of new Rule 1310 do not impose the same requirements as any existing

State or Federal law or regulation because 40 CFR 51.165 requires implementing rules by the State or Local agency to be submitted to USEPA for approval.

f. Reference:

The District has the authority pursuant to H & S Code §40702 to adopt, amend or repeal rules and regulations.

g. Public Notice & Comment, Public Hearing:

Notice for the public hearing for the proposed amendments to Regulation XIII and adoption of new Rule 1310 was published April 27, 2006 and July 27 2006. See Appendix "B" for a copy of the public notice. See Appendix "C" for copies of comments, if any, and District responses.

2. Federal Elements (SIP Submittals, Other Federal Submittals).

Submittals to USEPA are required to include various elements depending upon the type of document submitted and the underlying Federal law that requires the submittal. The information below indicates which elements are required for the proposed amendments to Regulation XIII and adoption of new Rule 1310 and how they were satisfied.

The adoption of amendments to Regulation XIII and new Rule 1310 are subject to all the requirements for State Implementation Plan (SIP) submittals because Regulation XIII implement the provisions of 42 U.S. C. §7511a (Federal Clean Air Act (FCAA) §182(b)) and are required to comply with the provisions of 40 CFR 51.160 et. seq. The requirements for determining completeness of a SIP submittal are found in 40 CFR 51 Appendix V, 2.0. In addition, the adoption of the proposed amendments to Regulation XIII and new Rule 1310 are required to conform with the recent changes to 40 CFR 51.165. Please note that amendments to Rule 1320 – *New Source Review for Toxic Air Contaminants* will not be submitted as a SIP revisions because that rule is required pursuant to 42 U.S.C. §7412(g) (FCAA §112(g)) and is a part of the Title V Program certification process (see 42 U.S.C. §§ 7661 et . seq; FCAA §501 et. seq and 40 CFR 70).

a. Satisfaction of Underlying Federal Requirements:

The proposed amendments to Regulation XIII and proposed new Rule 1310 satisfy the requirements of 42 U.S.C. §7511a (FCAA §182(b)) and 40 CFR 51.160 et. seq. Specifically, these amendments are designed to satisfy the recent amendments to 40 CFR 51.165 as promulgated on December 31, 2002 (67 FR 80187). The proposed amendments to Rule 1320 are merely conforming changes in citations to Rule 1302 and are not substantive in nature. Please see Section VI – Technical

Discussion for a detailed discussion regarding the specific requirements of 40 CFR 51.165 and how they were satisfied.

b. Public Notice and Comment:

Notice for the public hearing for the proposed amendments to Regulation XIII and adoption of new Rule 1310 was published April 27, 2006 and July 27, 2006. See Appendix "B" for a copy of the public notice. See Appendix "C" for copies of comments, if any, and District responses.

c. Availability of Document:

Copies of the proposed amendments to Regulation XIII, copies of new Rule 1310 and the accompanying draft staff report were made available to the public on April 21, 2006 and July 27, 2006. The proposed amendments were also reviewed by the Technical Advisory Committee, a committee consisting of a variety of regulated industry and local governmental entities, on March 23,2006, and June 23, 2006**.**

d. Notice to Specified Entities:

Copies of the proposed amendments to Regulation XIII, proposed new Rule 1310, and the accompanying draft staff report were sent to all affected agencies. The proposed amendments were sent to CARB and USEPA on December 27, 2005, March 08, 2006.and April 14, 2006, and June 23, 2006.

e. Public Hearing:

A public hearing to consider the proposed amendments to Regulation XIII and adoption of new Rule 1310 was set for May 22, 2006. The hearing was opened and continued to August 28, 2006.

f. Legal Authority to Adopt and Implement:

The District has the authority pursuant to H&S Code §40702 to adopt, amend, or repeal rules and regulations and to do such acts as may be necessary or proper to execute the duties imposed upon the District.

g. Applicable State Laws and Regulations Were Followed:

Public notice and hearing procedures pursuant to H&S Code §§40725-40728 have been followed. See Section (V)(A)(1) above for compliance with state findings required pursuant to H&S Code

§40727. See Section (V)(B) below for compliance with the required analysis of existing requirements pursuant to H&S Code §40727.2. See Section (V)(C) for compliance with economic analysis requirements pursuant to H&S Code §40920.6. See Section (V)(D) below for compliance with provisions of the California Environmental Quality Act (CEQA).

B. WRITTEN ANALYSIS OF EXISTING REQUIREMENTS

H & S Code §40727.2 requires air districts to prepare a written analysis of all existing federal air pollution control requirements that apply to the same equipment or source type as the rule proposed for modification by the district. The provisions of Regulation XIII in some cases would require the addition of air pollution control equipment to new or modified stationary sources of air pollution. However, the applicability of the entire Regulation XIII is not limited to any particular equipment or source type. In addition, the requirements of Regulation XIII are such that they do not require specific air pollution control equipment, rather they require the addition of Best Available Control Technology, Maximum Achievable Control Technology or other equipment to make emissions reductions which may be used as offsetting emissions reductions. Such equipment would be determined in most instances on a case-by-case basis at the time of application. Therefore, the preparation of a written analysis of all potential control equipment which might conceivably be applied to any stationary source or source category both now and in the future is not feasible.

C. ECONOMIC ANALYSIS

1. General.

The applicability of Regulation XIII in general is not limited to any particular equipment or source type. The proposed amendments only apply to those modifications which have emissions increases greater than the Federal significance threshold (100 tpy CO; 40 tpy NOx, VOC and SOx; 15 tpy PM in a PM nonattinment area; and .6 tpy Lead)..

The calculation methods used to determine the Federal significance threshold is somewhat different than those used to determine the applicability of the provisions in current Rule 1303. This difference should result in an extremely small minority of modifications that would qualify as Federal Major Modifications. Such modifications would be required to submit an alternative site analysis. Modifications which have an emissions increase greater than the 1303(B) offset threshold would be presumed to also be Federal Major Modifications unless the Facility submits documentation sufficient to determine that the emissions increase, as calculated pursuant to 1310(E), was less than the Federal Significance Threshold. Currently very few Facilities have modifications which require offsets under 1303(B). In addition, modifications which require offsets in most cases require land use or other permit changes which generally triggers the environmental review requirements under CEQA. The analysis

required by CEQA in most cases will satisfy the alternative site analysis requirement as well. Therefore, there should be little, if any, economic impact upon Facilities with such modifications.

In addition, any Federal Major Source may apply for a PAL. A Federal Major Source is defined as a source emitting more than a threshold amount based upon the new Federal 8-hour Ozone standard (100 tpy CO, PM10, NOx, SOx or VOC and 25tpy Lead). This Federal Major Source threshold determination is calculated using the current calculation procedures in Rule 1304. A properly issued PAL will exempt the Federal Major Source from the alternative site analysis for Federal Major Modifications so long as the modification occurs under the emissions cap imposed by the PAL. Please note, however, that such modifications would still remain subject to all the applicable state requirements such as BACT.

2. Incremental Cost Effectiveness.

Pursuant to H&S Code §40920.6, incremental cost effectiveness calculations are required for rules and regulations which are adopted or amended to meet the California Clean Air Act requirements for Best Available Retrofit Control Technology (BARCT) or "all feasible measures" to control volatile compounds, oxides of nitrogen or oxides of sulfur. The adoption of amendments to Regulation XIII and new Rule 1310 does not impose BARCT or "all feasible measures" and is therefore not subject to an incremental cost effectiveness analysis.

D. ENVIRONMENTAL ANALYSIS (CEQA)

1. Through the process described below the appropriate CEQA process for the proposed amendments to Regulation XIII and adoption of new Rule 1310 was determined.

   a. The proposed amendments to Regulation XIII and adoption of new Rule 1310 meet the CEQA definition of "project". They are not "ministerial" actions.

   b. The proposed amendments to Regulation XIII and adoption of new Rule 1310 are designed to comply with the recent changes to 40 CFR 51.165. The proposed amendments will impose additional documentation requirements and analysis upon a subcategory of rather large sources or modifications. Due to the provisions of H&S Code §§42500 et. seq the existing provisions of Regulation XIII will remain in full force and effect. Therefore, there should be no potential that the proposed amendments will casue a physical change to the environment and a class 8 categorical exemption (14 Cal. Code Reg. §15308) applies. Copies of the documents relating to CEQA can be found in Appendix "D".

E. SUPPLEMENTAL ENVIRONMENTAL ANALYSIS

1. Potential Environmental Impacts

The potential environmental impacts of compliance with the proposed amendments to Regulation XIII and adoption of new Rule 1310 are negligible. This is primarily due to the fact that modifications potentially identified as Federal Major Modifications will also be subject to all the currently existing requirements of Regulation XIII. The thresholds for the existing Regulation XIII requirements are lower than those found in proposed new Rule 1310. Therefore, all activities subject to the proposed new rule will also need to comply with the existing applicable requirements.

Any Modification with an emissions increase greater than the threshold found in 1303(B) would also be presumed to be a Federal Major Modification and be required to perform an alternative site analysis. However, a Facility could "opt out" of this requirement by providing information sufficient to determine that the emissions change was less than the 1310(D)(2) threshold using the calculation procedure found in 1310(E). A Federal Major Facility may also apply for a Plant Wide Applicability Limit (PAL) to provide a Facility wide emissions cap. The granting of a PAL will only impact the proposed Rule 1310 requirements and will not exempt such a Facility from the other, currently existing requirements contained in Regulation XIII.

The current requirements contained in Regulation XIII are not modified. They thus will provide an underlying backstop provision with which all Facilities and Modifications will need to comply. Therefore, the proposed amendments to Regulation XIII will not cause any additional environmental impacts.

2. Mitigation of Impacts

N/A

3. Alternative Methods of Compliance

N/A

F. PUBLIC REVIEW

See Staff Report Section (V)(A)(1)(g) and (2)(b), as well as Appendix "B"

VI. TECHNICAL DISCUSSION

A. SOURCE DESCRIPTION

The proposed amendments to Regulation XIII and new Rule 1310 generally apply to Federal Major Modifications. A Federal Major Modification is a modification which results in a net emissions increase greater than the Federal Significant Increase Threshold. Any Modification which has an emissions change greater than the 1303(B) threshold is presumed to be a Federal Major Modification unless an analysis has shown otherwise. The Federal Significant Increase Threshold is 100 tpy CO; 40 TPY NOx, VOC or SO2; 15 tpy PM10 within a PM10 nonattainment area; and 0.6 tpy Lead (See proposed 1310(D)(2)(a)).

In addition, proposed new Rule 1310 provides that any Federal Major Facility may apply for a PAL. A Federal Major Facility is a facility that emits or has the potential to emit certain pollutants in amounts greater than the Federal Major Facility threshold. For the AVAQMD the Federal Major Facility Threshold is based upon a district wide 8-hour Ozone designation of Moderate and is emissions of 100 tpy of CO, PM10, NOx, SOx, or VOC and 25 tpy of Lead (See proposed Rule 1310(D)(1)(a)). A properly issued PAL will exempt any future Federal Major Modification from the other documentation requirements of proposed Rule 1310.

Please note that emissions for the Federal Major Significance threshold determinations are calculated differently than the current Regulation XIII calculations found in Rule 1304. Emissions changes are determined by subtracting Baseline Actual Emissions from Projected Actual Emissions (See proposed 1310(E)(1)). Baseline Actual Emissions equal 0 for new facilities (See proposed 1310(E)(2)(c)). Base Line Actual Emissions for existing facilities are the actual emissions for any consecutive 2 year period in the last 10 years adjusted to include fugitive emissions, startup emissions and shutdown emissions and to exclude any amounts which are greater than any applicable emissions limit in effect during the 2 year period (See proposed 1310(E)(2)(b)). Baseline Actual Emissions for existing Electric Utility Steam Generating Units have the same inclusions and exclusions but use the actual emissions from any consecutive 2 year period in the last 5 years. Projected Actual Emissions are calculated as any 1 year period in the 5 years after the resumption of regular operation of the new or modified emissions unit. This 5 year period can be extended to 10 if the modification involves increase in design capacity and the increase is over the Federal Significant Increase threshold. In the alternative the owner or operator can elect to use Potential to Emit (PTE) as Projected Actual Emissions (See proposed 1310(E)(3)).

The net result of these calculation changes is that facilities or modifications which are subject to some or all of the provisions of 1303 (BACT & Offsets) using the calculation methodology in Rule 1304 may not be large enough under the proposed 1310 calculation methodology to qualify as a Federal Major Facility or Federal Major Modification. Thus, any facility or major modification will fall in one of the classifications listed in the following table:

Classification	**New Facility/Modification Specifications**	**Permitting Actions**
Not a modification	Existing facility change is not a modification as defined in Rule 1301.	Issue permit change pursuant to Regulation II.

Classification	New Facility/Modification Specifications	Permitting Actions
Very Small New Facility or Modification	All new/modified emission units emit <25 lbs/day; and Total facility emissions are <1303(B) threshold; and Emissions change is <1303(B) Facility emissions are < 1310(D)(1)(a) Federal Major Source threshold; and Change is < 1310(D)(2)(a) Federal Significant Increase threshold.	Issue permit via Regulation II.
Small New Facility or Modification	Any new/modified emission unit emits >25lbs day; and Total facility emissions are <1303(B) threshold; and Emissions change is <1303(B); and Facility emissions are < 1310(D)(1)(a) Federal Major Source threshold; and Change is < 1310(D)(2)(a) Federal Significant Increase threshold	Add BACT conditions to any emissions unit emitting >25 lbs/day; and Issue permit via Regulation II
State Major Facility – No net increase	Total facility emissions are >1303(B) threshold; and No net increase in facility emissions; and Facility emissions are < 1310(D)(1)(a) Federal Major Source threshold; and Change is < 1310(D)(2)(a) Federal Significant Increase threshold	Add BACT conditions to any new or modified emissions unit; and Engineering analysis shows "netting" transactions; and Issue permit via Regulation II
State Major Facility – Small increase	Total facility emissions are >1303(B) threshold; and Net emissions change >0; and Facility emissions are < 1310(D)(1)(a) Federal Major Source threshold; and Change is < 1310(D)(2)(a) Federal Significant Increase threshold	Add BACT conditions to any new or modified emissions unit; and Applicant provides Statewide certification; and Applicant provides Alternative Site analysis unless proven to be not a Federal Major Modification; and Applicant to provide offsets for emissions increase; and Issue permit via Regulation XIII.

Classification	New Facility/Modification Specifications	Permitting Actions
State Major Facility – Large increase	Total facility emissions are >1303(B) threshold; and Net emissions change >1303(B); and Facility emissions are < 1310(D)(1)(a) Federal Major Source threshold; and Change is < 1310(D)(2)(a) Federal Significant Increase threshold	Add BACT conditions to any new or modified emissions unit; and Applicant provides Statewide certification; and Applicant provides Alternative Site analysis unless proven to be not a Federal Major Modification; and Applicant to provide offsets for emissions increase; and Issue permit via Regulation XIII.
State Major Facility – Federal Significant Increase	Total facility emissions are >1303(B) threshold; and Net emissions change >1303(B); and Facility emissions are < 1310(D)(1)(a) Federal Major Source threshold; and Emissions change >1310(D)(2)(a)	Add BACT conditions to any new or modified emissions unit; and Applicant to provide offsets for emissions increase; and Applicant to provide alternative site analysis; and Applicant to provide statewide certification; and Issue permit via Regulation XIII
Federal Major Facility – No net increase	Total facility emissions are >1303(B) threshold; and No net emissions change; and Facility emissions are >1310(D)(1)(a) Federal Major Source threshold; and Change is < 1310(D)(2)(a) Federal Significant Increase threshold	Add BACT conditions to any new or modified emissions unit; and Issue permit via Regulation XIII *Applicant can apply for a PAL

Classification	New Facility/Modification Specifications	Permitting Actions
Federal Major Facility – Small increase	Total facility emissions are >1303(B) threshold; and Net emissions change >0; and Facility emissions are >1310(D)(1)(a) Federal Major Source threshold; and Change is < 1310(D)(2)(a) Federal Significant Increase threshold	Applicant to provide statewide certification. Applicant provides Alternative Site analysis unless proven to be not a Federal Major Modification; and Add BACT conditions to any new or modified emissions unit; and Applicant to provide offsets for emissions increase; and Issue permit via Regulation XIII. *Applicant can apply for a PAL
Federal Major Facility – Federal Significant Increase	Total facility emissions are >1303(B) threshold; and Net emissions change >0; and Facility emissions are >1310(D)(1)(a) Federal Major Source threshold; and Change is > 1310(D)(2)(a) Federal Significant Increase threshold	Applicant to provide statewide certification; and Applicant to provide alternative site analysis unless under applicable PAL; and Add BACT conditions to any new or modified emissions unit; and Applicant to provide offsets for emissions increase; and Issue permit via Regulation XIII *Applicant can apply for a PAL

B. EMISSIONS

The proposed amendments to Regulation XIII and the addition of proposed Rule 1310 do not change emissions standards and thresholds because the current thresholds, limitations, and calculations remain in place. The proposed amendments merely provide additional requirements for larger modifications. The net result is that any large modification subject to the proposed amendments will be required to perform an alternative site analysis. Such facilities will still be required to comply with any other applicable provisions of Regulation XIII.

C. CONTROL REQUIREMENTS

Currently Regulation XIII requires BACT and Offsets for new and modified facilities that have emissions or emissions changes over certain thresholds. The proposed modifications and new Rule 1310 do not change these requirements.

D. PROPOSED RULE SUMMARY

This section gives a brief overview of the proposed amendments to Regulation XIII and new Rule 1310.

1. Proposed Amendments to Rule 1302

1302(B)(1)(a)(iii) is proposed to be modified to clearly indicate that the alternative siting analysis is only required for Federal Major Modifications as defined in proposed new Rule 1310. This is not a substantive modification to the rule in that the citation to 42 U.S.C. §7503(a)(5) (FCAA §173(a)(5)) indirectly provides the same result. It also provides an "opt out" for a Facility with a modification which has submitted information sufficient to show that the emissions change while greater than the 1303(B) threshold is less than the 1310(D)(2) threshold. Facilities which have a valid PAL are also exempted from the alternative site analysis requirement so long as the modification remains under the PAL emissions cap.

1302(B)(1)(a)(iv) is added pursuant to CARB comment #3 of 3/23/06 for clarity regarding the statewide certification requirement. The statewide compliance certification applies to those modifications which are greater than the 1303(B) threshold. This requirement has merely moved from its current position in 1302(D)(5)(b) to this position.

1302(B)(1)(a)(v) is renumbered to reflect the addition of subsection (B)(1)(a)(iv).

1302(B)(1)(a)(vi) is added to clarify the submission requirements for Facilities wishing to "opt out" from the alternative site analysis requirement and for those Facilities wishing to obtain a PAL.

1302(B)(2)(c) contains a cross-reference citation which is modified to reflect the addition of subsection (B)(1)(a)(iv).

1302(C)(1)(b) is added to require an analysis of any application which submits information to "opt out" or to obtain a PAL to determine if the proposed emissions change is greater than the 1310(D) thresholds.

1302(C)(3) is added to insert the proposed new Rule 1310 analysis and addition of requirements, if any, into the permit issuance process.

1302(C)(4) a heading has been added to retain the outline sequencing.

1302(C)(4)(a) has been renumbered from (C)(3)(c) to retain the outline sequencing.

1302(C)(5) has been renumbered from (C)(3) to retain the outline sequencing.

1302(C)(5)(b)(iii) was added to limit USEPA's veto authority to offset packages involving Federal Major Facilities and Federal Major Modifications in a federal nonattainment area. This limitation was suggested by USEPA.

1302(C)(5)(b)(iv) and (v) were moved from 1302(E)(5)(a)(i) to clarify that the statewide certification is required of all facilities and modifications requiring offsets under 1303(B).

2. Proposed Amendments to Rule 1305

Language had been added to 1305 (B)(3)(a)(iv), (B)(3)(b)(v), (B)(3)(c)(iv), (B)(3)(d)(iv), (B)(4)(a); (B)(5)(a); and (B)(6)(a) to limit USEPA's veto authority to offset packages involving Federal Major Facilities and Federal Major Modifications in a federal nonattainment area. This limitation was suggested by USEPA.

1305(B)(6)(b) has been modified to preserve outline formatting and to revise tense.

1305(B)(6)(c-e) have been renumbered to preserve outline formatting.

3. Proposed New Rule 1310

Rule 1310 is proposed to be added to provide requirements and calculation methods for determining Federal Major Facilities and Federal Major Modifications.

Rule 1310(A) sets out the purpose of the new rule.

Rule 1310(B) indicates that the rule applies to Federal Major Modifications, to those modifications where the Facility has not "opted out" (Presumptive Federal Major Modifications) and to allow Federal Major Facilities to obtain PALs.

Rule 1310(C) provides definitions. The definitions are all derived from the revisions to 40 CFR 51.165. For the derivation of any specific definition please see the *[bracketed and italicized]* information in the rule redline found in Appendix A.

Rule 1310(D) sets forth the thresholds and the requirements for Federal Major Facilities and Federal Major Modifications.

Rule 1310(E) sets forth the emissions calculations used to determine emissions changes under this rule.

Rule 1310(F) provides for the Plant Wide Applicability Limits (PALs)..

4. Proposed Amendments to Rule 1320

Rule 1320(E)(2)(b)(ii), (E)(3)(f)(ii), (F)(1)(b)(ii), (F)(2)(b)(vii) and (F)(2)(c) have been modified to correct the cross referencing citation to proposed amended rule 1302.

E. COMPLIANCE WITH H&S CODE §§4500 ET. SEQ

H&S Code §§42500 et. seq was adopted by the California Legislature in 2000 (ch 467 §1, SB288 of 2000). Its primary purpose was to prohibit California air district's from revising certain portions of their existing New Source Review rules to less stringent measures than those in place on December 30, 2002. H&S Code §42504(b) prohibits revisions which would exempt, relax or reduce any of the following requirements: Applicability determination for NSR; definitions of modification, major modification, routine maintenance, repair or replacement; Calculation methodologies; Thresholds; Requirements to obtain NSR or other permits prior to commencing construction; BACT requirements; Air quality impact analysis requirements; Recordkeeping and reporting requirements that makes the recordkeeping less representative or publicly accessible; Requirements for regulation of pollutants covered by NSR; and Requirements for public participation.

The proposed amendments to Regulation XIII and proposed new rule 1310 leave all the provisions of prior Regulation XIII in place. They provide additional requirements that are only applicable to certain large sources or modifications. Such sources and modifications retain the requirements to comply with the all the current NSR requirements. Since the current, pre December 30, 2002 requirements remain in place this portion of the proposed amendments comply with H&S Code §§42500 et seq.

The proposed amendments also retain USEPA's veto authority over offset packages for Federal Major Facilities in Federal non-attainment areas. USEPA would still retain commenting authority for all other offset packages. The MDAQMD in the past has committed to consider and comply, if possible, with any USEPA comments on offset packages. This policy is not going to be changed by the proposed amendments. These particular proposed requirements are merely procedural and only apply the method and relationship regarding review of offsets between USEPA and the District. As such these proposed revisions are not changes to requirements imposed upon sources and therefore not prohibited by the provisions of H&S Code §§42500 et seq.

F. SIP HISTORY

1. SIP History.

a. SIP in the San Bernardino County Portion of MDAQMD

The initial version of Regulation XIII was adopted on July 21, 1980 by the San Bernardino County Air Pollution Control District (SBCAPCD) and consisted of Rules 1300, 1301, 1302, 1303, 1304,

1305, 1306, 1307, 1308, 1310, 1311 and 1313. It was submitted as a SIP revision and approved by USEPA on June 9, 1982 (47 FR 25013; 40 CFR 52.220(c)(87)(iv)(A); See also 40 CFR 52.232(a)(13)(i)(A)).

On July 1, 1993 the MDAQMD was formed pursuant to statute. Pursuant to statute it also retained all the rules and regulations of the SBCAPCD until such time as the Governing Board of the MDAQMD wished to adopt, amend or rescind such rules. The MDAQMD Governing Board, at its very first meeting, reaffirmed all the rules and regulations of the SBCAPCD. On October 27, 1993 the MDAQMD amended various rules. This version was submitted as a SIP revision but no action was taken by USEPA. On March 25, 1996 the MDAQMD Governing Board completely reorganized the regulation so that it now consisted of Rules 1300, 1301, 1302, 1303, 1304, 1305 and 1306. This version was submitted and approved by USEPA on November 13, 1996 (61 FR 58113; 40 CFR 52.220(c)(239)(i)(A)). The Governing Board adopted further amendments to Rules and added an additional Rule 1320 - *New Source Review for Toxic Air Contaminants.* These amendments were submitted as a SIP revision with the exception of Rule 1320. No action has yet been taken on this submission by USEPA.

Since SIP revisions in California are adopted by USEPA as effective in areas which happen to be defined by both air basin designations and the jurisdictional boundaries of local air districts within those air basins, the MDAQMD "inherited" the SBCAPCD SIP which was in effect for what is now called the San Bernardino County Portion of MDAB. Therefore, The March 25, 1996 versions of Regulation XIII is the version contained in the SIP for the San Bernardino County Portion of MDAB.

b. SIP in the Riverside County (Blythe/Palo Verde Valley) Portion of the MDAQMD

One of the provisions of the legislations which created the MDAQMD allowed areas contiguous to the MDAQMD boundaries and within the same air basin to leave their current air district and become a part of the MDAQMD. On July 1, 1994 the area commonly known as the Palo Verde Valley in Riverside County, including the City of Blythe, left SCAQMD and joined the MDAQMD. Since USEPA adopts SIP revisions in California as effective within the jurisdictional boundaries of local air districts, when the local boundaries change the SIP as approved by USEPA for that area up to the date of the change remains as the SIP in that

particular area. Upon annexation of the Blythe/Palo Verde Valley the MDAQMD acquired the SIP prior to July 1, 1994 that was effective in the Blythe/Palo Verde Valley. Therefore, the SIP history for the Blythe/Palo Verde Valley Portion of the MDAQMD is based upon the rules adopted and approved for that portion of Riverside County by SCAQMD.

The SCAQMD initial version of Regulation XIII was adopted on October 5, 1979 and consisted of Rules 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1310, 1311, 1312 and 1313. SCAQMD thereafter amended various portions of the Regulation on March 7, 1980, July 11, 1980. These versions were submitted as a SIP revision and approved by USEPA on January 21, 1981 (46 FR 5965; 40 CFR 52.220(c)(68)(i) and (70)(i)(A)) and June 9, 1982 (47 FR 25013; 40 CFR 52.220(c)(87)(v)(A)). On September 10, 1982 Rules 1309 and 1309.1 were added to the regulation. SCAQMD continued to amend the regulation in whole and in part on July 12, 1985, January 10, 1986, August 1, 1986, December 2, 1988, June 28, 1990, May 3, 1991, June 5, 1992; and September 11, 1992. These amendments presumably were submitted as SIP revisions but USEPA had taken no action as of July 1, 1994 when the Blythe/Palo Verde Valley area became a part of the MDAQMD.

The March 25, 1996 reorganization of Regulation XIII applied in the Blythe/Palo Verde Valley area of the MDAQMD. The reorganized regulation consisted of Rules 1300, 1301, 1302, 1303, 1304, 1305 and 1306. This version was submitted and approved by USEPA on November 13, 1996 (61 FR 58113; 40 CFR 52.220(c)(239)(i)(A)). The Governing Board adopted further amendments to Rules and added an additional Rule 1320 - *New Source Review for Toxic Air Contaminants.* These amendments were submitted as a SIP revision with the exception of Rule 1320. No action has yet been taken on this submission by USEPA. Therefore, the version in the SIP for the Blythe/Palo Verde Valley area is the same as the version in effect in the San Bernardino County portion of the MDAB.

2. SIP Analysis.

The District will request CARB to submit the proposed amendments to Regulation XIII and new Rule 1310 to replace the SIP versions in effect in the San Bernardino County portion of the MDAB and the Blythe/Palo Verde Valley portion of Riverside County with the exception of Rule 1320, which is not a SIP rule. This submission is necessary to properly implement the new regulations promulgated by USEPA for New Source Review.

Since there are previously existing SIP rules for this category the District will request that they be superseded. In order to replace existing SIP rules the District is required to show that the proposed amendments are not less stringent than the provisions currently in the SIP. Since the proposed amendments merely add additional provisions and do not substantially change the existing SIP provisions these amendments are at least as stringent as those currently found in the SIP.

Appendix "A"
Regulation XIII - *New Source Review*
Iterated Version

The iterated version is provided so that the changes to an existing rule may be easily found. The manner of differentiating text is as follows:

1. Underlined text identifies new or revised language.

2. ~~Lined out text~~ identifies language which is being deleted.

3. Normal text identifies the current language of the rule which will remain unchanged by the adoption of the proposed amendments.

4. *[Bracketed italicized text]* is explanatory material that is not part of the proposed language. It is removed once the proposed amendments are adopted.

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(**Adopted:** 07/21/80; **Amended:** 10/27/93; **Amended:** 03/25/96; **Amended:** 09/24/01; Amended: _____)

Rule 1302
Procedure

(A) Applicability

(1) This rule shall apply to all new or modified Facilities, including EEGFs as defined in District Rule 1301(T), pursuant to the provisions of District Rule 1306.

(B) Applications

(1) Initial Analysis

(a) Any application for an ATC or modification to a PTO, submitted pursuant to the procedures of District Regulation II, shall be analyzed to determine if such application is complete.

(i) An application is complete when it contains enough information to allow all the applicable analysis and calculations required under this Regulation to be made.

(ii) Comprehensive Emission Inventory

a. All Facilities shall submit a Comprehensive Emissions Inventory in conjunction with the application.

b. If a Facility has a current, approved Comprehensive Emissions Inventory on file with the District such Facility may, upon written request and approval of the APCO, update the Comprehensive Emission Inventory to reflect the addition, deletion or modification of all Emissions Units affected by the application.

c. No application may be determined to be complete without a Comprehensive Emissions Inventory or Comprehensive Emission Inventory update.

(iii) Alternative Siting

a. For Facilities and Modifications requiring offsets pursuant to District Rule 1303(B) ~~for which an analysis of alternative sites, sizes and production processes is required under 42 U.S.C. 7503(a)(5) (Federal Clean Air Act §173(a)(5))~~ a complete application shall include an analysis of alternative sites, sizes and production processes pursuant to 42 U.S.C. §7503(a)(5) (Federal Clean Air Act §173(a)(5)). Such analysis shall be functionally equivalent to that required pursuant to Division 13 of the California Public Resources Code (commencing with section 21000).

b. The provisions of (B)(1)(a)(iii)a. above shall not apply if the Facility or Modification has been determined to not ba a Federal Major Facility or a Federal Major Modification as defined in District Rule 1310(C)(6) and (7) or the Facility

has previously applied for and received a valid Plantwide Applicability Limit (PAL) pursuant to the provisions of District Rule 1310(F).

(iv) Statewide Compliance Certification

a. For Facilities and Modifications which require offsets pursuant to District Rule 1303(B a complete application shall include a certification that all Facilities which are under the control of the same person (or persons under common control) in the State of California are in compliance with all applicable emissions limitations and standards under the Federal Clean Air Act and the applicable implementation plan for the air district in which eht other Facilities are located. *[Added for clarity pursuant to CARB comment #3 of 3/22/06. See also Adams Brodwell et al Comment 4/24/06 Derived from fromer section (D)(5)(b)(iii)]*

(~~i~~v) Class I Area Visibility Protection

a. An application for a Major Facility or a Facility with a Major Modification which is located within 60 miles of a Class I Area, as defined in 40 CFR 51.301(o), shall include in its application an analysis of any anticipated impacts on visibility within that Class I Area. Such analysis shall include, but is not limited to, an analysis of the factors found in 40 CFR 51.301(a). *[Renumbered]*

(vi) District Rule 1310 Applicability

a. For Facilities and Modifications which requires offsets pursuant to District Rule 1303(B) a complete application may include an analysis sufficient to show that the Facility or Modification is not a Federal Major Facility or a Federal Major Modification as defined in District Rule 1310(C)(6) and (7). *[This optional analysis will exempt a facility from the Alternative Site analysis above and set USEPA authority over offsets to commenting level]*

b. For a Facility requesting a PAL pursuant to District Rule 1310(F) a complete application shall include an anlysis sufficient to justify the classification of the Facility as a Federal Major Facility as defined in District Rule 1310(C)(6) and any information necessary to issue the proposed PAL in conformance with all applicable provisions of 40 CFR 51.165(f)(1-15). *[Allows facility to "opt in" to PALs]*

(b) The APCO shall determine whether the application is complete not later than thirty (30) calendar days after receipt of the application, or after such longer time as both the applicant and the APCO may agree in writing.

(2) Notifications Regarding Applications

(a) After the determination of completeness has been made, the APCO shall transmit a written determination of completeness or incompleteness immediately to the applicant at the address indicated on the application.

(i) If the application is determined to be incomplete, the determination shall specify which parts of the application are incomplete and how they can be made complete.

a. Upon receipt by the APCO of information required to render an application complete or upon resubmittal of the entire application, a new thirty (30) day period in which the APCO must determine completeness, shall begin.

(b) In the alternative, the APCO may complete the issuance of the ATC(s) within the thirty (30) calendar days after receipt of the application so long as either of the following conditions are met:

(i) None of the requirements contained in District Rule 1303 apply to the project; or

(ii) The requirements of District Rule 1303(A) applies to the project and the issuance of the ATC(s) comply with the requirements of subsection (C)(2)(a)(i).

(c) If the application contains an analysis of anticipated visibility impacts on a Class I Area, as defined in 40 CFR 51.301(o), pursuant to subsection (B)(1)(a)(~~i~~v) above, the APCO shall, within thirty (30) calendar days after receipt of the application, notify USEPA and the Federal Land Manager of the affected Class I Area. *[Cross reference renumbered]*

(i) The APCO shall include in such notification a copy of the application and the analysis of anticipated impacts on the affected Class I Area.

(3) Effect of Complete Application

(a) After an application is determined to be complete, the APCO shall not subsequently request of an applicant any new or additional information which was not specified in the APCO's list of items to be included within such applications.

(b) Notwithstanding the above, the APCO may, during the processing of the application, require an applicant to clarify, amplify, correct or otherwise supplement the information required in such list in effect at the time the complete application was received.

(c) A request by the APCO for clarification pursuant to subsection (B)(3)(b) above does not waive, extend, or delay the time limits in this rule for final

action on the completed application, except as the applicant and the APCO may both agree in writing.

(4) Fees

(a) The APCO shall not perform any analysis as set forth in section (C) below unless all applicable fees, including but not limited to Project Evaluation Fees for Complex Sources, as set forth in District Rule 301 have been paid.

(C) Analysis

(1) Determination of Emissions

(a) The APCO shall analyze the application to determine the type, amount, and change (if any) in emissions pursuant to the provisions of District Rule 1304.

(b) If a Facility has provided information pursuant to subsection (B)(1)(a)(vi) above, the APCO shall also analyze the application to determine the type, amount and change (if any) in emissions pursuant to the provisions of District Rule 1310. *[Requires calculation of emissions change for federal purposes only if the Facility wishes to omit the Alternative Site Analysis or if the Facility wants to apply for a PAL.]*

(2) Determination of Requirements

(a) The APCO shall, after the analysis, determine if any or all of the provisions of District Rule 1303 apply to the new or modified Facility.

(i) If none of the provisions of District Rule 1303 apply to the new or Modified Facility, then the APCO shall commence the issuance of the ATC or modification of the PTO pursuant to the provisions of Regulation II.

(ii) If only the provisions of District Rule 1303(A) apply to the new or modified Facility, and the application does not utilize SERs to reduce PE then:

a. The APCO shall commence the issuance of the ATC or modification of the PTO pursuant to the provisions of Regulation II; and

b. The ATC or PTO so issued or modified shall include conditions required to implement BACT on all new or modified Emissions Unit(s) at the Facility.

(iii) If only the provisions of District Rule 1303(A) apply to the new or modified Facility, and the application utilizes SERs to reduce PE then:

a. The APCO shall produce a Facility engineering analysis which contains substantially the same information required for a decision under section (D) below; and

b. After the production of the Facility engineering analysis the APCO shall commence the issuance of the ATC or modification of the PTO pursuant to the provisions of Regulation II; and

c. The ATC or PTO so issued or modified shall include conditions required to implement BACT on all new or Modified Emission Units at the Facility.

(iv) If the provisions of District Rule 1303(B) apply to the new or modified Facility then the APCO shall continue the analysis and issuance procedure as set forth in this Rule.

(b) If the provisions of District Rule 1303(B) and the new or modified Facility is located in an area classified by USEPA as attainment or unclassifiable then the APCO shall, after analysis, determine if the Facility will cause or contribute to a violation of the national Ambient Air Quality Standards.

(i) The provisions of section (C)(2)(b) above may be satisfied by performance of appropriate modeling as approved by the APCO.

(3) Determination of Additional Federal Requirements *[Retitled for clarity. CARB comment #5 of 03/22/06]*

(a) For Facilities which have provided information pursuant to subsection (B)(1)(a)(vi)a. the APCO shall, after the analysis, determine if any or all of the provisions of District Rule 1310 apply to the facility.

(i) If none of the provisions of District Rule 1310 apply to the modification the APCO shall continue the analysis and issuance procedure as set forth in this Rule.

(ii) If any of the provisions of District Rule 1310 apply to the modification the APCO prior to issuing any ATC or PTO shall:

a. Ensure that an alternative site analysis required under 42 U.S.C. §7530(a)(5) (Federal Clean Air Act §173(a)(5)) has been performed; and

b. Add any conditions to the applicable permits required to implement any provisions of District Rule 1310. *[Allows for addition of conditions.]*

(b) For Facilities and Modifications which require offsets pursuant to District Rule 1303(B) which do not provide information pursuant to (B)(1)(a)(vi)a. prior to issuing any ATC or PTO the APCO shall:

(i) Ensure that an alternative site analysis required under 42 U.S.C. §7530(a)(5) (Federal Clean Air Act §173(a)(5)) has been performed; and

(ii) Add any conditions to the applicable permits required to implement any provisions of District Rule 1310. *[Requires alternative site analysis for any facility not providing information to "opt out" of the Federal requirements.]*

(c) For a Facility requesting a PAL pursuant to the provisions of District Rule 1310(F) the APCO shall add any conditions to the applicable permits required to implement the PAL. *[Added to require implementing conditions for PALs to be added to permits.]*

(4) Determination of Requirements for Toxic Air Contaminants *[Retitled for clarity. CARB comment #6 03/22/06]*

(~~c~~a) The APCO shall also determine if any of the provisions of District Rule 1320 - New Source Review of Carcinogenic Air Contaminants apply to the new or Modified Facility.

(i) If any of the provisions of District Rule 1320 apply to the new or Modified Facility the APCO shall require the Facility to comply with the applicable provisions of that rule prior to proceeding with any further analysis or processing of an application pursuant to this Regulation.

(~~3~~5) Determination of Offsets

(a) If the provisions of District Rule 1303(B) apply to the new or modified Facility, then the APCO shall analyze the application to determine the amount and type of Offsets required pursuant to the provisions of District Rule 1305.

(i) The APCO shall thereafter notify the applicant in writing of the specific amount and type of Offsets.

(b) Upon receipt of the notification, the applicant shall provide to the APCO a proposed Offset package which contains evidence of Offsets eligible for use pursuant to the provisions of District Rule 1305.

(i) The APCO shall analyze the proposed Offset package to determine if an adjustment in the value of such Offsets is required pursuant to the provisions of District Rule 1305(C)(4).

(ii) The APCO shall disallow the use of any Offsets which were created by the shutdown of Emissions Unit(s) when:

a. The Offsets were created by a shutdown of Emissions Unit(s) which was not contemporaneous with the creation of the Offsets; and

b. USEPA has disapproved the applicable implementation plan for the District or USEPA has made a finding of a failure to submit for the District of all or a portion of an applicable implementation plan.

(iii) After determining that the Offsets are real, enforceable, surplus, permanent and quantifiable and after any permit modifications required pursuant to District Rule 1305 or Regulation XIV have been made, the APCO shall approve the use of the Offsets.

a. For a Federal Major Facility as defined in District Rule 1310(C)(6) or Federal Major Modification as defined in District Rule 1310 (C)(7) and which is located in a Federal nonattainment area, the APCO's approval shall be subject to the approval of CARB and USEPA during the comment period required pursuant to subsection (D)(2) below. *[Limitation of offset veto authority by USEPA to only federal sources and areas requested by USEPA]*

b. For all other Facilities or Modifications subject to this provision the APCOs approval shall be subject to the approval of CARB during the comment period required pursuant to subsection (D)(2) below. *[Limitation of offset veto authority by USEPA to only federal sources and areas requested by USEPA. USEPA retains all other commenting authority]*

(iv) The Offset package must be submitted and approved by the APCO prior to the issuance of the New Source Review Document and any permits.

(v) The Offsets must be obtained prior to the commencement of construction on the new or Modified Facility.

(D) Permit Issuance Procedure

(1) Preliminary Decision

(a) After the analysis has been completed, the APCO shall issue a preliminary decision as to whether the New Source Review Document should be approved, conditionally approved, or disapproved and whether ATC(s) should be issued to the new or modified Facility.

(b) The preliminary decision shall include:

(i) A succinct written analysis of the approval, conditional approval or denial; and

(ii) If approved or conditionally approved, proposed permit conditions for the ATC(s) or modified PTO(s) and the reasons for imposing such permit conditions.

(2) CARB, USEPA and Affected State Review

(a) If the provisions of District Rule 1303(B) apply to the new or modified Facility the APCO shall, concurrently with the publication required pursuant to subsection (D)(3) below, send a copy of the preliminary decision and any underlying analysis to CARB, USEPA and any Affected State.

(b) CARB, USEPA and any Affected State shall have thirty (30) days from the date of publication of the notice pursuant to subsection (D)(3) below to submit comments and recommendations regarding the preliminary decision.

(c) Upon receipt of any comments and/or recommendations from CARB USEPA and any Affected State the APCO shall either:

(i) Accept such comments and/or recommendations and modify the preliminary decision accordingly; or
(ii) Reject such comments and/or recommendations, notify CARB, USEPA, and/or the Affected State of the rejection and the reasons for such rejection.

(d) For applications containing an analysis of anticipated visibility impacts on a Class I Area, as defined in 40 CFR 51.301(o), pursuant to subsection (B)(1)(a)(~~i~~v) above, the APCO, upon receipt of any comments from USEPA or the Federal Land Manager of the affected Class I Area, shall: *[Cross reference renumbered]*

(i) Accept such comments and/or recommendations and modify the preliminary decision accordingly; or
(ii) Reject such comments and/or recommendations, notify CARB, USEPA, and/or the Federal Land Manager of the affected Class I Area of the rejection and the reasons for such rejection.

(3) Public Review and Comment

(a) Publication of Notice

(i) If the provisions of District Rule 1303(B) apply to the new or modified Facility then, within ten (10) days of the issuance of the preliminary determination, the APCO shall:
a. Publish a notice in at least one newspaper of general circulation within the District; and
b. Send a copy of the notice to all persons who have requested such notice and/or on a list of persons requesting notice of actions pursuant to this regulation generally on file with the Clerk of the Board for the District; and
c. Provide notice by other reasonable means, if such notice is necessary to assure fair and adequate notice to the public

(ii) Such notice shall provide thirty (30) days from the date of the publication of the notice for the public to submit written comments on the preliminary decision and shall include:

a. The name and location of the Facility, including the name and address of the applicant if different.

b. A statement indicating the availability, conclusions of the preliminary decision and a location where the public may obtain or inspect the preliminary decision and supporting documentation; and

c. A brief description of the comment procedures and deadlines; and

d. If the APCO has rejected comments regarding anticipated visibility impacts on a Class I Area, a notation of the availability of the reasons for such rejection.

(b) Availability of Documents

(i) If the provisions of District Rule 1303(B) apply to the new or modified Facility, then at the time of publication of the notice required above the APCO shall make available for public inspection at the offices of the District or in another prominent place the following information:

a. The application and any other information submitted by the applicant; and

b. The preliminary decision to grant or deny the Authority to Construct, including any proposed permit conditions and the reasons therefore; and

c. The supporting analysis for the preliminary decision.

(ii) Notwithstanding the above, the APCO is not required to release confidential information. Information shall be considered confidential when:

a. The information is a trade secret or otherwise confidential pursuant to California Government Code 6254.7(d); or

b. The information is entitled to confidentiality pursuant to 18 U.S.C. §1905; and

c. Such information is clearly marked or otherwise identified by the applicant as confidential.

(c) The APCO shall accept all relevant comment(s) submitted to the District in writing during the thirty (30) day public comment period.

(d) The APCO shall consider all written comments submitted by the public during the comment period.

(e) The APCO shall keep a record of all written comments received during the public comment period and shall retain copies of such comments in the District files for the particular Facility.

(f) If any changes are made to the preliminary decision as a result of comments received from the public, CARB, USEPA or any Affected State the APCO shall send a copy of the proposed changes to CARB and USEPA for review.

(4) Final Action

(a) After the conclusion of the comment period and consideration of the comments, the APCO shall produce a final New Source Review Document.

(b) Thereafter, the APCO shall take final action to issue, issue with conditions or decline to issue the New Source Review Document.

(i) Such final action shall take place no later than 180 days after the application has been determined to be complete.

(ii) The APCO shall not take final action to issue the New Source Review Document if either of the following occurs:

a. USEPA objects to such issuance in writing; or

b. USEPA has determined, as evidenced by a notice published in the Federal Register, that the applicable implementation plan is not being adequately implemented in the nonattainment area in which the new or modified Facility is located.

(c) The APCO shall provide written notice of the final action to the applicant, USEPA and CARB.

(d) If substantive changes have been made to the Preliminary Decision or other New Source Review Document after the opening of the public comment period, the APCO shall also cause to be published a notice substantially similar in content to the notice required by subsection (D)(3)(a) above, in a newspaper of general circulation within the District of the final action.

(e) The final New Source Review Documents and all supporting documentation shall remain available for public inspection at the offices of the District.

(5) Issuance of ATC(s)

(a) In conjunction with final action on the NSR Document the APCO shall issue ATC(s) for the new or modified Facility pursuant to the provisions of District Regulation II. Such ATC(s) shall contain, at a minimum, the following conditions:

(i) All conditions regarding construction, operation and other matters as set forth in the NSR Document; and

(ii) If a new or modified Facility is a replacement, in whole or in part, for an existing Facility or Emissions Unit on the same or contiguous property, a condition allowing a maximum of one hundred eighty (180) days start up period for simultaneous operation of the new or modified Facility and the existing Facility or Emissions Unit; and

(iii) A condition requiring the Facility to be operated in accordance with the conditions contained on the ATC(s);

(b) The APCO shall not issue ATC(s) to a new or modified Facility pursuant to this regulation unless:

(i) The new Facility or Modification to an existing Facility is constructed using BACT for each Nonattainment Air Pollutant when the provisions of Rule 1303(A) apply.

(ii) Any increase in emissions for each Nonattainment Air Pollutant has been properly offset prior to Beginning Actual Construction when the provisions of Rule 1303(B) apply.

~~(iii) The applicant certifies in writing, prior to the issuance of any permit that all Facilities which are under the control of the same person (or persons under common control) in the State of California, are in compliance with all applicable emissions limitations and standards under the Federal Clean Air Act and the applicable implementation plan for the air district in which the Facility is located.~~ *[Moved to (B)(1)(a)(iv)]*

(~~iv~~iii) The new or modified Facility complies with all applicable Rules and Regulations of the District.

(6) Issuance of PTO(s)

(a) After the final action on the New Source Review Document pursuant to this Regulation and/or the issuance of ATC(s) pursuant to the provisions of District Regulation II, the APCO shall deny the subsequent issuance of PTO(s) unless the APCO determines that:

(i) The owner or operator of the new or modified Facility has submitted a completed application for ATC(s) or modification of a PTO.

a. An initial application for PTO(s) may be considered an application for a ATC(s) if the application and the applicant comply with all the provisions of this Regulation.

(ii) The new or modified Facility has been Constructed and operated in a manner consistent with the conditions as set forth in the NSR document and the ATC(s); and

(iii) That the permit(s) of any Facility or Emissions Unit(s) which provided Offsets to the new or modified Facility have been properly modified and/or valid contracts have been obtained

pursuant to the provisions of District Rule 1305 or Regulation XIV.

(iv) That the Offsets, if required pursuant to District Rule 1303(B), were real, permanent, quantifiable prior to the commencement of construction of the Facility.

(v) That all conditions contained in the ATC(s) requiring performance of particular acts or events by a date specified have occurred on or before such dates.

(vi) If the actual emissions are greater than those calculated when the ATC was issued:

a. That the owner/operator has provided additional offsets to cover the difference between the amount of offsets originally provided and the amount of offsets necessary calculated pursuant to District Rule 1305 as based upon the actual emissions of the facility; and

b. That such additional offsets were provided within ninety (90) days of the owner/operator being notified by the APCO that such additional offsets are necessary.

[SIP: Submitted as amended 09/24/01 on _____; Approved 11/13/96, 61 FR 58133, 40 CFR 52.220(c)(239)(I)(A)(1); Submitted as amended 10/27/93 on 3/29/94; Conditional Approval 6/9/82, 47 FR 25013, 40 CFR 52.220(c)(87)(iv)(A) and 40 CFR 52.232(a)(13)(i)(A)]

(**Adopted:** 06/21/80; **Amended:** 10/27/93; **Amended:** 03/25/96; **Amended:** 09/24/01; Amended: _____)

Rule 1305
Emissions Offsets

(A) General

(1) Purpose

(a) This Rule provides the procedures and formulas to determine the eligibility of, calculate the amount of, and determine the use of Offsets required pursuant to the provisions of District Rule 1303(B).

(2) Calculation of Amount of Offsets Necessary

(a) Necessary Offsets shall be calculated based upon the nature of the Facility or Modification and the applicable Offset ratios.

(b) The APCO shall first determine the type of Facility or Modification and the base quantity of Offsets required as follows:

(i) For a new Major Facility the base quantity of Offsets shall be equal to the total Proposed Emissions, calculated pursuant to Section (E) below, for the Facility on a pollutant category specific basis.

(ii) For emissions increases from a Modification to a previously existing non-major Facility, the base quantity of Offsets shall be determined as follows:

a. For a Major Modification to an existing non-major Facility the base quantity of Offsets shall be equal to either of the following:

i. The Facility's Proposed Emissions, on a pollutant category specific basis, when the Facility is located in a Federal nonattainment area; or

ii. The amount of the Facility's Proposed Emissions, on a pollutant category specific basis, which exceeds the threshold amounts as set forth in District Rule 1303(B) when the Facility is located in a Federal attainment or unclassified area.

b. For a Modification to a previously non-major Facility which subsequently results in the Facility becoming a Major Facility, the base quantity of Offsets shall be equal to either of the following:

i. The Facility's Proposed Emissions when the Facility is located in a Federal nonattainment area; or

ii. The amount of the Facility's Proposed Emissions, on a pollutant category specific basis, which exceeds the threshold amounts as set forth in

District Rule 1303(B) when the Facility is located in a Federal attainment or unclassified area.

c. For a non-major Facility which becomes a Major Facility due to the relaxation of a Federal requirement or a Federally Enforceable requirement, the base quantity of Offsets shall be equal to either of the following:

i The Facility's Proposed Emissions when the Facility is located in a Federal nonattainment area; or

ii. The amount of the Facility's Proposed Emissions, on a pollutant category specific basis, which exceeds the threshold amounts as set forth in District Rule 1303(B) when the Facility is located in a Federal attainment or unclassified area.

(iii) For emissions increases from a Modification to a Major Facility the base quantity of Offsets shall be the amount equal to the difference between the Facility's Proposed Emissions and the HAE.

(c) Additional Requirements for Seasonal Sources

(i) The base quantity of Offsets for new or modified Seasonal Sources shall be determined on a quarterly basis.

(ii) Seasonal emissions used for Offsets shall generally occur during the same consecutive monthly period as the new or modified Facility operates.

(3) After determining the base quantity of Offsets, the APCO shall apply the appropriate Offset ratio as set forth in subsection (C) below, dependant upon the location of the Offsets and the location of the proposed new or modified Facility or Emissions Unit.

(4) If eligible interpollutant Offsets are being used the APCO shall apply the appropriate ratio.

(B) Eligibility of Offsets

(1) ERCs or AERs may be used as Offsets when:

(a) Such ERCs have been calculated and issued by the District pursuant to the provisions in Regulation XIV and such ERCs are obtained from a Facility (or combination of Facilities) which are:

(i) Located within the same federal nonattainment, attainment or unclassified area as that were the Offsets are to be used; or

(ii) Located in an area with a federal designation (in the case of attainment or unclassified areas) or classification (in the case of nonattainment areas) which is greater than or equal to the designation or classification of the area where the Offsets are to be used so long as the emissions from that area cause or contribute to a violation of the National Ambient Air Quality Standards in the area in which the offsets are to be used.

(b) Such AERs have been calculated, adjusted and approved pursuant to the provisions of District Rule 1404(A) and comply with the provisions of section (B)(2) below.

(c) Such ERCs have been calculated and issued in another air district under a program developed pursuant to Health & Safety Code §§40700-40713 so long as the source of such credits is contained within the same air basin as the District and the use of the ERCs comply with the provisions of section (B)(4) below.

(d) Such ERCs have been calculated and issued in another air district under a program developed pursuant to Health & Safety Code §§40709-40713 and the transfer of such credits complies with the requirements of Health & Safety Code §40709.6 and the use of the ERCs comply with the provisions of section (B)(5) below.

(2) AERs Generated by Simultaneous Reductions at a Facility

(a) AERs generated from simultaneous reductions occurring at the same Facility may be used as Offsets when:

(i) The AERs have been calculated, adjusted and approved pursuant to the provisions of District Rule 1404(A); and
(ii) Such AERs are real, enforceable, surplus, permanent and quantifiable; and
(iii) The owner and/or operator of the Emissions Units involved has obtained appropriate permits and/or submitted other enforceable documents as follows:
a. If the AERs are the result of a Modification or limitation of the use of existing equipment, the owner and/or operator has been issued revised PTOs containing Federally Enforceable conditions reflecting the Modification(s) and/or limitation(s).
b. If the AERs are the result of a shutdown of Permit Unit(s), the owner and/or operator has surrendered the relevant permits and those permits have been voided.
i. The Permit Unit(s) for which the permits were surrendered will not be repermitted within the

District, unless their emissions are completely Offset pursuant to the provisions of this Regulation.

c. If the AERs are the result of a shutdown or Modification of Emission Unit(s) which did not have a District permit, owner and/or operator has obtained valid District PTO(s) or has provided a contract, enforceable by the District, which contains enforceable limitations on the Emissions Unit(s).

d. If the AERs are the result of the application of a more efficient control technology to an Emissions Unit, the owner and/or operator has a valid District PTO for both the underlying Emissions Unit and the new technology.

(b) AERs generated from Federally Enforceable reductions in a Facility's Potential to Emit may be used as Offsets if the HPE for the Facility or Emissions Unit which is proposed for a Federally Enforceable reduction in its Potential to Emit was completely offset in a prior permitting action pursuant to this Regulation.

(i) AERs generated under subsection (B)(2)(b) above are not eligible for banking pursuant to the provisions of District Regulation XVI.

(3) Mobile Area and Indirect Source Emissions Reductions

(a) Mobile Source AERs may be used as Offsets on a case-by case basis when:

(i) The applicant demonstrates sufficient control over the Mobile Sources to ensure the claimed reductions are real, enforceable, surplus, permanent and quantifiable; and

(ii) Such Mobile Source AERs are consistent with Mobile Source emissions reduction as guidelines issued by CARB; and

(iii) The specific proposed Mobile Source AERs are approved prior to the issuance of the New Source Review document and any ATC(s) by the APCO in consultation with CARB; and

(iv) For a Federal Major Facility as defined in District Rule 1310(C)(6) or a Federal Major Modification as defined in District Rule 1310(C)(7) and which is located in a Federal nonattainment area ~~T~~the specific proposed Mobile Source AERs are approved prior to the issuance of the New Source Review document and any ATC(s) by USEPA. *[Limitation of offset veto authority to only federal sources and areas requested by USEPA. USEPA retains normal commenting powers for all non-federal sources and attainment/unclassified area offset packages.]*

(b) Mobile Source ERCs may be used as Offsets on a case-by-case basis when:

(i) Such Mobile Source ERCs have been calculated and banked pursuant to the provisions of District Regulation XIV; and

(ii) The applicant demonstrates sufficient control over the Mobile Sources to ensure the claimed reductions are real, enforceable, surplus, permanent and quantifiable; and

(iii) Such Mobile Source ERCs are consistent with Mobile Source emissions reduction as guidelines issued by CARB; and

(iv) The specific Mobile Source ERCs are approved for use prior to the issuance of the New Source Review document and the issuance of any ATCs by the APCO in concurrence with CARB; and

(v) For a Federal Major Facility as defined in District Rule 1310(C)(6) or a Federal Major Modification as defined in District Rule 1310(C)(7) and which is located in a Federal nonattainment area ~~T~~the specific Mobile Source ERCs are approved for use prior to the issuance of the New Source Review document and the issuance of any ATCs by USEPA; and *[Limitation of offset veto authority to only federal sources and areas requested by USEPA. USEPA retains normal commenting powers for all non-federal sources and attainment/unclassified area offset packages.]*

(vi) Such Mobile Source ERCs comply with the applicable provisions of section (B)(1) above.

(c) Area and Indirect Source AERs may be used as Offsets on a case-by-case basis when:

(i) The applicant demonstrates sufficient control over the Area or Indirect Sources to ensure the claimed reductions are real, enforceable, surplus, permanent and quantifiable; and

(ii) Such Area or Indirect Source AERs are calculated pursuant to a formula which has been approved by CARB and USEPA; and

(iii) The specific proposed Area or Indirect Source AERs are approved prior to the issuance of the New Source Review document and any ATC(s) by the APCO in concurrence with CARB; and

(iv) For a Federal Major Facility as defined in District Rule 1310(C)(6) or a Federal Major Modification as defined in District Rule 1310(C)(7) and which is located in a Federal nonattainment area ~~T~~the specific proposed Area or Indirect Source AERs are approved prior to the issuance of the New Source Review document and any ATC(s) by USEPA~~.~~; and *[Limitation of offset veto authority to only federal sources and areas requested by USEPA. USEPA retains normal commenting powers for all non-federal sources and attainment/unclassified area offset packages.]*

(v) Such Area or Indirect Source AERs comply with the applicable provisions of section (B)(1) above.

(d) Area and Indirect Source ERCs may be used as Offsets on a case-by-case basis when:

(i) Such Area or Indirect Source ERCs have been calculated and banked pursuant to the provisions of District Regulation XIV.

(ii) The applicant demonstrates sufficient control over the Area or Indirect Sources to ensure the claimed reductions are real, enforceable, surplus, permanent and quantifiable; and

(iii) The specific Area or Indirect Source ERCs are approved for use prior to the issuance of the New Source Review document and the issuance of any ATCs by the APCO in concurrence with CARB; and

(iv) For a Federal Major Facility as defined in District Rule 1310(C)(6) or a Federal Major Modification as defined in District Rule 1310(C)(7) and which is located in a Federal nonattainment area ~~T~~the specific Area or Indirect Source ERCs are approved for use prior to the issuance of the New Source Review document and the issuance of any ATCs by USEPA; and *[Limitation of offset veto authority to only federal sources and areas requested by USEPA. USEPA retains normal commenting powers for all non-federal sources and attainment/unclassified area offset packages.]*

(v) Such Area or Indirect Source ERCs comply with the applicable provisions of section (B)(1) above.

(4) Offsets from Other Air Districts and Within the Air Basin

(a) Emissions reductions occurring within the air basin but outside the District may be used as Offsets upon approval of the APCO.~~,~~

(i) For a Federal Major Facility as defined in District Rule 1310(C)(6) or a Federal Major Modification as defined in District Rule 1310(C)(7) and which is located in a Federal nonattainment area the APCO's approval shall be made in consultation with CARB and the USEPA, on a case-by-case basis. *[Limitation of offset veto authority to only federal sources and areas requested by USEPA. USEPA retains normal commenting powers for all non-federal sources and attainment/unclassified area offset packages.]*

(ii) For all other Facilities or Modifications subject to this provision the APCO's approval shall be made in consultation with CARB on a case-by-case basis. *[Limitation of offset veto authority to only federal sources and areas requested by USEPA. USEPA retains normal commenting powers for all non-federal sources and attainment/unclassified area offset packages.]*

(b) Such emissions reductions may only be used as Offsets if:

(i) The emissions reductions are obtained in a nonattainment area which has a greater or equal nonattainment classification than the area where the Offsets are to be used; and

(ii) The emissions from the other nonattainment area contribute to a violation of the Ambient Air Quality Standards in the area where the Offsets are to be used.

(c) Such emissions reductions shall comply with the requirements of subsection (B)(1)(c) above.

(5) Offsets from Other Air Districts and Outside the Air Basin

(a) Emissions reductions from outside the air basin may be allowed to be used as Offsets upon approval of the APCO.~~,~~

(i) For a Federal Major Facility as defined in District Rule 1310(C)(6) or a Federal Major Modification as defined in District Rule 1310(C)(7) and which is located in a Federal nonattainment area the APCO's approval shall be made in consultation with CARB and USEPA, on a case-by-case basis. *[Limitation of offset veto authority to only federal sources and areas requested by USEPA. USEPA retains normal commenting powers for all non-federal sources and attainment/unclassified area offset packages.]*

(ii) For all other Facilities or Modifications subject to this provision the APCO's approval shall be made in consultation with CARB on a case-by-case basis. *[Limitation of offset veto authority to only federal sources and areas requested by USEPA. USEPA retains normal commenting powers for all non-federal sources and attainment/unclassified area offset packages.]*

(b) Such emissions reductions may only be used as Offsets if:

(i) The emissions reductions are obtained in a nonattainment area which has a greater or equal nonattainment classification than the area where the Offsets are to be used; and

(ii) The emissions from the other nonattainment area contribute to a violation of the Ambient Air Quality Standards in the area where the Offsets are to be used.

(c) Such emissions reductions shall comply with the requirements of subsection (B)(1)(d) above.

(6) Interpollutant Offsets

(a) Emissions reductions of one type of Air Pollutant may be used as Offsets for another type of Air Pollutant upon approval of the APCO.~~,~~

(i) For a Federal Major Facility as defined in District Rule 1310(C)(6) or a Federal Major Modification as defined in District Rule 1310(C)(7) and which is located in a Federal nonattainment area

the APCO's approval shall be made in consultation with CARB and the approval of USEPA, on a case-by-case basis as long as the ~~following apply~~provisions of subsection (B)(6)(b) below are met.~~:~~ *[Limitation of offset veto authority to only federal sources and areas requested by USEPA. USEPA retains normal commenting powers for all non-federal sources and attainment/unclassified area offset packages.]*

(ii) For all other Facilities or Modifications subject to this provision the APCO's approval shall be made in consultation with CARB on a case-by-case basis. *[Limitation of offset veto authority to only federal sources and areas requested by USEPA. USEPA retains normal commenting powers for all non-federal sources and attainment/unclassified area offset packages.]*

(b) In approving the use of interpollutant offsets the APCO shall determine that:

(i) The trade ~~must be~~ is technically justified; and

(ii) The applicant ~~must demonstrate~~has demonstrated, to the satisfaction of the APCO, that the combined effect of the Offsets and emissions increases from the new or modified Facility will not cause or contribute to a violation of an Ambient Air Quality Standard.

(~~b~~c) The APCO shall, based upon an air quality analysis, determine the amount of Offsets necessary, as appropriate.

(~~c~~d) Interpollutant trades between PM_{10} and PM_{10} precursors may be allowed on a case by case basis. PM_{10} emissions shall not be allowed to Offset nitrogen oxide or reactive organic compounds emissions within any ozone nonattainment area.

(~~d~~e) Such ERCs comply with the applicable provisions of section (B)(1) above.

(C) Offset Ratio and Adjustments

(1) Offsets for Net Emissions Increases of Nonattinment Air Pollutants shall be provided on a pollutant category specific basis, calculated as provided in section (B) above and multiplied by the appropriate Offset ratio listed in the following table:

TABLE OF OFFSET RATIOS

POLLUTANT	OFFSET RATIO (Within a Federal Ozone Attainment or Unclassified Area)	OFFSET RATIO (Within a Federal Ozone Nonattainment Area)	OFFSET RATIO (Within a Federal PM_{10} Nonattainment Area)

POLLUTANT	OFFSET RATIO (Within a Federal Ozone Attainment or Unclassified Area)	OFFSET RATIO (Within a Federal Ozone Nonattainment Area)	OFFSET RATIO (Within a Federal PM_{10} Nonattainment Area)
Carbon Monoxide (CO)	1.0 to 1.0	1.0 to 1.0	1.0 to 1.0
Hydrogen Sulfide (H_2S)	1.0 to 1.0	1.0 to 1.0	1.0 to 1.0
Lead (Pb)	1.0 to 1.0	1.0 to 1.0	1.0 to 1.0
PM_{10}	1.0 to 1.0	1.0 to 1.0	1.0 to 1.0
Oxides of Nitrogen (NO_x)	1.0 to 1.0	1.3 to 1.0	1.0 to 1.0
Oxides of Sulfur (SO_x)	1.0 to 1.0	1.0 to 1.0	1.0 to 1.0
Reactive Organic Compounds (ROC)	1.0 to 1.0	1.3 to 1.0	1.0 to 1.0

(2) If a Facility is located within more than one Federal nonattainment area, the largest applicable Offset ratio for each Nonattainment Air Pollutant shall apply.

(3) The ratio for Offsets obtained from outside the District for any Nonattainment Air Pollutant shall be equal to the offset ratio which would have applied had such Offsets been obtained within the District.

(4) The APCO shall adjust any Offsets proposed to be used to reflect any emissions reductions in excess of RACT in effect at the time such Offsets are used if such reductions have not already been reflected in the calculations required pursuant to District Rules 1304(C)(2) or 1404(A)(3).

(D) Modeling for Offset Purposes

(1) Offsets shall not be required for increases in attainment Air Pollutants if the applicant demonstrates to the satisfaction of the APCO, through an impact analysis, that the ambient air quality standards are not violated in the areas to be affected, and such emissions will not cause or contribute to a violation of Ambient Air Quality Standards.

(E) Calculation of Terms Used in Rule 1305

(1) Unless otherwise specified in this subsection all terms requiring calculations shall be calculated pursuant to the provisions of District Rule 1304.

(2) Proposed Emissions

(a) For a new or modified Facility or Emissions Unit(s), the Proposed Emissions shall be equal to the Potential to Emit as defined in District

Rule1301(UU) for that Facility or Emissions Unit as calculated pursuant to (E)(3) below.

(3) Potential to Emit

(a) The Potential to Emit for a Facility for purposes of determining base quantity of Offsets shall be calculated as follows:

(i) The sum of the Potentials to Emit for all existing Permit Units; and
(ii) The emissions increases from proposed new or modified Permit Units; and
(iii) The emissions from all Cargo Carriers; all Fugitive Emissions; and Nonpermitted Equipment which are directly associated with the operation of the Facility.
(iv) Any Emission Reduction Credits issued and banked pursuant to the provisions of District Regulation XIV shall be included in the calculations of a Facility's Potential to Emit.

[SIP: Submitted as amended 09/24/01 on _____; Approved 11/13/96, 61 FR 58133, 40 CFR 52.220(c)(239)(I)(A)(1); Submitted as amended 10/27/93 on 3/29/94; Conditional Approval 6/9/82, 47 FR 25013, 40 CFR 52.220(c)(87)(iv)(A) and 52.232(a)(13)(i)(A)]

Rule1310
Federal Major Facilities and Federal Major Modifications

(A) Purpose

(1) The purpose of this Rule is to:

(a) Set forth the additional requirements and procedures for Federal Major Modifications and Presumptive Federal Major Modifications. *[Rule adopted to comply with new provisions of 40 CFR 51.165]*

(b) Set forth the requirements and procedures for the implementation of Plant Wide Applicability Limits.

(B) Applicability

(1) The provisions of this Rule apply to:

(a) Any Federal Major Modification

(b) Any Presumptive Federal Major Modification *[Modifications bigger than 1303(B) thresholds but where the facility doesn't submit "opt out" information under 1302(B)(1)(a)(vi)a.*]

(c) Any Federal Major Facility which requests a Plant Wide Applicability Limit pursuant to section (F).

(C) Definitions

The definitions contained in District Rule 1301 shall apply unless the term is otherwise defined herein.

(1) "Baseline Actual Emissions" – The rate of emissions, in tons per year, of a Regulated NSR pollutant, as calculated pursuant to subsection (E)(2). *[Derived from 40 CFR 51.165(a)(1)(xxxv)]*

(2) "Contemporaneous" – An increase or decrease in Actual Emissions of an Emissions Unit which occurs before the date of any increase from the proposed Modification.*[Derived from 40 CFR 51.165(a)(1)(vi)(B)]*

(3) "Creditable" – An increase or decrease in Actual Emissions of an Emissions Unit which:

(a) Occurs within a reasonable time period before the proposed Modification; and *[Derived from 40 CFR 51.165(a)(1)(vi)(C)(1)]*

(b) Has not been used in a prior permitting action by the District. *[Derived from 40 CFR 51.165(a)(1)(vi)(C)(2)]*

(4) "Electric Utility Steam Generating Unit" - Any steam electric generating unit that supplies more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility. *[Derived from 40 CFR 51.165(a)(1)(xx)]*

(5) "Existing Emissions Unit" – An Emissions Unit which has existed for 2 years or more from the date the Emissions Unit first operated. *[Derived from 40 CFR 51.165(a)(1)(vii)(B)]*

(6) "Federal Major Facility" – Any Facility which emits or has the Potential to Emit any Regulated NSR Pollutant in an amount greater than or equal to the amounts set forth in subsection (D)(1). *[Derived from 40 CFR 51.165(a)(1)(iv]*

(a) Any physical change at a Facility which, by itself, would emit or have the Potential to Emit any Regulated Air Pollutant or its Precursors in an amount greater than or equal to the amounts listed in subsection (D)(1), shall also constitute a Major Facility. *[Derived from 40 CFR 51.165(a)(1)(iv)(A)(1); Necessary to allow implementation of PALs]*

(b) The Fugitive Emissions of a Facility shall not be included in the determination of whether a Facility is a Major Facility unless the Facility belongs to one of the twenty-seven (27) categories of Facilities as listed in 40 CFR 51.165(a)(1)(iv)(C). *[Derived from 40 CFR 51.165(a)(1)(iv)(A)(2) ; Necessary to allow implementation of PALs]*

(7) "Federal Major Modification" – Any Modification that would result in a Federally Significant Emissions Increase of a Regulated NSR Pollutant. *[Derived from 40 CFR 51.165(a)(1)(v]*

(8) "Federal Significant Emission Increase" - A Net Emissions Increase of a Regulated NSR Pollutant from a Facility which would be greater than or equal to the emissions rates listed in subsection (D)(2) below for those Air Pollutants and their Precursors dependant upon Facility location. *[Derived from 40 CFR 51.165(a)(1)(x)]*

(9) "Net Emissions Increase" – With respect to any regulated NSR pollutante emitted by a Major Facility, the amount by which the sum of the following exceeds zero: *[Derived from 40 CFR 51.165(a)(1)(vi)(A)]*

(a) The increase in emissions from a particular physical change or change in the method of operation at a Facility as calculated pursuant to subsection (E)(1) of this rule; and *[Derived from 40 CFR 51.165(a)(1)(vi)(A)(1)]*

(b) Any other increases and decreases in actual emissions at the Facility that are Contemporaneous with the particular change and are otherwise creditable. *[Derived from 40 CFR 51.165(a)(1)(vi)(A)(2)]*

(i) Baseline emissions used to determine contemporaneous increases and decreases shall be calculated pursuant to subsection (E)(2) of this rule except that the provisions of subsection (E)(2)(a)(iv) and (E)(2)(b)(v) shall not apply. *[Derived from 40 CFR 51.165(a)(1)(vi)(A)(2) Sentence 2]*

(10) "New Emissions Unit" – Any Emissions Unit which:

(a) Is or will be newly constructed; or *[Derived from 40 CFR 51.165(a)(1)(vii)(A)]*

(b) Has existed for less than 2 years from the date such Emissions Unit first operated; or *[Derived from 40 CFR 51.165(a)(1)(vii)(A)]*

(c) A Replacement Emissions Unit for which the Emissions Unit it reqplace has been brought back into operation. *[Derived from 40 CFR 51.165(a)(1)(xxi)(D) Sentence 2]*

(11) "Plantwide Applicability Limit" (PAL) – An emission limitation expressed in tons per year for a Regulated Air Pollutant at a Federal Major Facility that is enforceable as a practical matter and established for the entire Facility in accordance with the provisions of section (F) below.*[Derived from 40 CFR 51.165(f)(2)(v)]*

(12) "Presumptive Federal Major Modification" – A Modification as defined in District Rule 1301(HH) which requires offsets pursuant to the provisions of 1303(B) but which has not been determined by the APCO to be below the threshold of subsection (D)(2). *[Ties into the analysis required by 1302(C)(1)(b) and the additional information submitted under 1302(B)(1)(a)(vi)a.]*

(13) "Projected Actual Emissions" – The maximum annual rate, in tons per year, at which an Existing Emissions Unit is projected to emit a Regulated NSR Pollutant as calculated pursuant to subsection (E)(3). *[Derived from 40 CFR 51.165(a)(1)(xxviii)(A)]*

(14) "Regulated NSR Pollutant" –Any Air Pollutant and its Precursors for which an Ambient Air Quality Standard has been promulgated, including but not limited to: *[Derived from 40 CFR 51.165(a)(1)(xxxvii)(B) and (C)]*

(a) Oxides of Nitrogen (NOx) and their precursors; *[Derived from 40 CFR 51.165(a)(1)(xxxvii)(A) and (C)]*

(b) Volatile Organic Compounds (VOC) and their precursors; *[Derived from 40 CFR 51.165(a)(1)(xxxvii)(A) and (C)]*

(D) Requirements

(1) Federal Major Facility Threshold

(a) Any Facility that has a Potential to Emit rate of a Regulated NSR Pollutant, calculated pursuant to District Rule 1304, which is greater than or equal to the following Federal Major Facility Threshold is a Federal Major Facility. *[CARB Comment #9 3/22/06]*

Table 1
FEDERAL MAJOR FACILITY THRESHOLD AMOUNTS

POLLUTANT	FEDERAL MAJOR FACILITY THRESHOLD
Carbon Monoxide (CO)	100 tpy
Lead (Pb)	25 tpy
PM10	100 tpy
Oxides of Nitrogen (NOx)	100 tpy
Oxides of Sulfur (SOx)	100 tpy
Volatile Organic Compounds (VOC)	100 tpy

[Values Reflect 8 hour Ozone standard classification of Moderate and PM10 classification of Moderate; Necessary to allow implementation of PALs.]

(2) Federal Major Modification Threshold

(a) A Modification to any Facility that has a Net Emissions Increase of a Regulated NSR Pollutant, calculated pursuant to section (E)(1) below, which is greater than or equal to the following Federal Significant Emissions Increase Threshold amount is a Federal Major Modification.

Table 2
FEDERAL SIGNIFICANT EMISSIONS INCREASE THRESHOLD

POLLUTANT	EMISSION RATE (Within an attainment or unclassified area)	EMISSION RATE (Within an ozone nonattainment area)	EMISSION RATE (Within a moderate PM_{10} nonattainment area)	
Carbon Monoxide (CO)	100 tpy	100 tpy	100 tpy	

POLLUTANT	EMISSION RATE (Within an attainment or unclassified area)	EMISSION RATE (Within an ozone nonattainment area)	EMISSION RATE (Within a moderate PM_{10} nonattainment area)	
Lead (Pb)	0.6 tpy	0.6 tpy	0.6 tpy	
Oxides of Nitrogen (NOx)	40 tpy	40 tpy	40 tpy	
PM10	15 tpy	15 tpy	15 tpy	
Volatile Organic Compounds (VOC)	40 tpy	40 tpy	40 tpy	
Sulfur Dioxide (SO2)	40 tpy	40 tpy	40 tpy	

[Derived from 40 CFR 51.165(a)(1)(x)]

(b) If a Facility is located in more than one federal nonattainment area then the lower of the limits listed above shall apply on a pollutant specific basis. *[Derived from 40 CFR 51.165(a)(1)(x). CARB Comment #10, 03/22/06]*

(3) Any Federal Major Modification shall:

(a) Perform an alternative site analysis under 42 U.S.C. §7530(a)(5) (Federal Clean Air Act §173(a)(5)).*[Provides an affirmative requirement of alternative site analysis.]*

(E) Calculations

(1) General Emissions Calculations

(a) To determine if a Modification is a Federal Major Modification the emissions increase resulting from the Modification shall be calculated as follows: *[CARB Comment #11 03/22/06]*

(Projected Actual Emissions) – (Baseline Actual Emissions)

[See 40 CFR 51.165(a)(1)(vi)]

(2) Calculating Baseline Actual Emissions

(a) For any Existing Electric Utility Steam Generating Unit:

(i) The Baseline Actual Emissions of an Emissions Unit or combination of Emissions Units averaged from either

a. Any consecutive 24-month period within 5-years immediately preceding beginning actual construction of the Modification; or *[Derived from 40 CFR 51.165(a)(1)(xxxv)(A) sentence 1]*

b. Any period within 5-years immediately preceding beginning the actual construction of the Modification which the APCO has determined is more representative of Facility operations than subsection (E)(2)(a)(i)a. above. *[Derived from 40 CFR 51.165(a)(1)(xxxv)(A) sentence 2]*

(ii) The Baseline Actual Emissions shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions. *[Derived from 40 CFR 51.165(a)(1)(xxxv)(A)(1)]*

(iii) The BaselineActual Emissions shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period. *[Derived from 40 CFR 51.165(a)(1)(xxxv)(A)(2)]*

(iv) When a Modification involves multiple Emissions Units only one period as specified in subsection (E)(2)(a)(i) may be used for each Regulated NSR Pollutant. *[Derived from 40 CFR 51.165(a)(1)(xxxv)(A)(3) Sentence 1]*

(v) When a Modification involves multiple Regulated NSR Pollutants a different period as specified in subsection (E)(2)(a)(i) above may be used for each pollutant. *[Derived from 40 CFR 51.165(a)(1)(xxxv) (A)(3) Sentence 2]*

(vi) The BaselineActual Emissions shall not be based on any period specified in subsection (E)(2)(a)(i) above for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount. *[Derived from 40 CFR 51.165(a)(1)(xxxv) (A)(4)]*

(b) For an Existing Emissions Unit (other than an Electric Utility Steam Generating Unit)

(i) The Baseline Actual Emissions of an Emissions Unit or combination of Emissions Units averaged from

a. Any consecutive 24-months within 10-year period immediately preceding the date the application for the Modification is determined to be complete by the District. *[Derived from 40 CFR 51.165(a)(1)(xxxv)(B) sentence 1]*

(ii) The Baseline Actual Emissions shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions. *[Derived from 40 CFR 51.165(a)(1)(xxxv)(B)(1)]*

(iii) The Baseline Actual Emissions shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the period specified in subsection (E)(2)(b)(i) above. *[Derived from 40 CFR 51.165(a)(1)(xxxv)(B)(2)]*

(iv) The Baseline Actual Emissions shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the Federal Major Facility must currently comply, had such Federal Major Facility been required to comply with such limitations during the period specified in subsection (E)(2)(b)(i) above unless: *[Derived from 40 CFR 51.165(a)(1)(xxxv)(B)(3) Sentence 1]*

a. The emission limitation is part of a maximum achievable control technology standard proposed or promulgated under 40 CFR 63 by USEPA; and *[Derived from 40 CFR 51.165(a)(1)(xxxv)(B)(3)]*

b. The District has not taken credit for such emissions reductions in an attainment demonstration or maintenance plan promulgated pursuant to the provisions of Title I of the Federal Clean Air Act (42 U.S.C. §§7401 et seq)

(v) When a Modification involves multiple Emissions Units only one period as specified in subsection (E)(2)(b)(i) may be used for each Regulated NSR Pollutant. *[Derived from 40 CFR 51.165(a)(1)(xxxv)(B)(3) Sentence 1]*

(vi) When a Modification involves multiple Regulated NSR Pollutants a different period as specified in subsection (E)(2)(b)(i) above may be used for each pollutant. *[Derived from 40 CFR 51.165(a)(1)(xxxv)(B)(3) Sentence 2]*

(vii) The Baseline Actual Emissions shall not be based on any period specified in subsection (E)(2)(b)(i) above for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount. *[Derived from 40 CFR 51.165(a)(1)(xxxv)(B)(4)]*

(c) For a New Emissions Unit

(i) For purposed of determining emissions increases resulting from the initial construction and operation of the new Emissions Unit the baseline emissions shall be equal to zero. *[Derived from 40 CFR 51.156(a)(1)(xxxv)(B)(5)]*

(ii) For all other purposes the baseline emissions shall be the Emissions Unit's PTE. *[Derived from 40 CFR 51.156(a)(1)(xxxv)(B)(5)]*

(3) Calculating Projected Actual Emissions

(a) The Projected Actual Emissions for proposed Federal Major Modifications shall be calculated using any of the following periods:

(i) Any 12-month period in the 5-years following the date the Emissions Unit resumes regular operation after the Modification; or *[Derived from 40 CFR 51.165(a)(1)(xxviii)(A)]*

(ii) Any 12-month period in the 10-years following the date the Emissions Unit resumes regular operation after the Modification if: *[Derived from 40 CFR 51.165(a)(1)(xxviii)(A)]*

a. The Modification involves increasing the Emissions Unit's design capacity or PTE of the Regulated NSR Pollutant; and *[Derived from 40 CFR 51.165(a)(1)(xxviii)(A)]*

b. The full utilization of the Emissions Unit would result in a Federal Significant Emissions Increase or a Federal Significant Net Emissions Increase. *[Derived from 40 CFR 51.165(a)(1)(xxviii)(A)]*

(b) The Projected Actual Emissions calculation shall:

(i) Include all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under the approved plan; and *[Derived from 40 CFR 51.165(a)(1)(xxviii)(B)(1)]*

(ii) Include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions. *[Derived from 40 CFR 51.165(a)(1)(xxviii)(B)(2)]*

(iii) Exclude that portion of the Emission Unit's emissions following the modification that the pre-modification Emissions Unit could have accommodated during the consecutive 24-month period used to establish the baseline actual and that are also unrelated to the particular modification. *[Derived from 40 CFR 51.165(a)(1)(xxviii)(B)(3)]*

(c) In lieu of calculating Projected Actual Emissions the owner/operator of the Facility may elect to use the PTE of the Emissions Unit as calculated pursuant to the provisions of District Rule 1304(D). [*Derived from 40 CFR 51.165(a)(1)(xxviii)(B)(4)]*

(F) Plant Wide Applicability Limits

(1) Application

(a) Any Federal Major Facility may apply to the APCO for the issuance of a PAL. *[Derived from 40 CFR 51.165(f)(3)]*

(b) Such application shall be subject to the applicable provisions of District Rule 301. *[Provides cross reference to fee rule.]*

(2) Issuance

(a) The APCO shall approve a PAL if the owner or operator of the Federal Major Facility demonstrates that the PAL conforms with all the provisions specified in 40 CFR 51.165(f)(1-15). *[Derived from 40 CFR 51.165(f)(1)(i)]*

(b) The APCO shall include on any and all appropriate permits held by the Federal Major Facility conditions sufficient to implement and enforce the PAL. *[Requires PAL provisions to be placed on permits.]*

(3) Effect of a PAL

(a) A Federal Major Facility with a PAL shall not be subject to the provisions of Rule 1310(D)(3) above only for: *[Derived from 40 CFR 51.165(a)(1)(v)(D)]*

(i) The pollutant for which the PAL is approved; and *[Derived from 40 CFR 51.165(a)(1)(v)(D)]*

(ii) The transactions which are allowable under the PAL *[Derived from 40 CFR 51.165(a)(1)(v)(D)]*

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Rule 1320
New Source Review For Toxic Air Contaminants

(A) Purpose

(1) The purpose of this Rule is to:

(a) Set forth the requirements for preconstruction review of all new, Modified, Relocated or Reconstructed Facilities which emits or have the potential to emit any Hazardous Air Pollutant, Toxic Air Contaminant, or Regulated Toxic Substance; and

(b) Ensure that any new, Modified, or Relocated Emissions Unit is required to control the emissions of Toxic Air Contaminants as required pursuant to Chapter 3.5 of Part 1 of Division 26 of the California Health and Safety Code (commencing with §39650); and

(c) Ensure that any proposed new or Reconstructed Facility or Emissions Unit is required to control the emissions of Hazardous Air Pollutants as required under 42 U.S.C. §7412(g).

(B) Applicability

(1) General Applicability

(a) The provisions of this rule shall be applicable to:

(i) Applications for new, Modified or Relocated Facilities or Permit Units which were received by the District on or after the adoption date of this rule.
(ii) Permit Units installed without a required Authority to Construct Permit shall be subject to this rule, if the application for a permit to operate such equipment was submitted after the adoption date of this rule.
(iii) Applications shall be subject to the version of the District Rules that are in effect at the time the application is received.

(2) State Toxic New Source Review Program (State T-NSR) Applicability

(a) The provisions of Subsection (E) of this Rule shall apply to any new or Modified Emissions Unit which:

(i) Emits or has the potential to emit a Toxic Air Contaminant; or
(ii) Is subject to an Airborne Toxic Control Measure.

(3) Federal Toxic New Source Review Program (Federal T-NSR) Applicability

(a) The provisions of Subsection (F) of this Rule shall apply to any new or Reconstructed Facility or new or Modified Emissions Unit which:

(i) Emits or has the potential to emit 10 tons per year or more of any single HAP; or
(ii) Emits or has the potential to emit 25 tons per year or more of any combination of HAPs; or
(iii) Has been designated an Air Toxic Area Source by USEPA pursuant to the provisions of 42 U.S.C. §7412 and the regulations promulgated thereunder.

(C) Definitions

The definitions contained in District Rule 1301 shall apply unless the term is otherwise defined herein.

(1) "Air Toxic Area Source" – Any stationary source of Hazardous Air Pollutants that emits or has the potential to emit less than ten (10) tons per year of any single HAP or twenty-five (25) tons per year of any combination of HAPs and which has been designated as an area source by USEPA pursuant to the provisions of 42 U.S.C. §7412.

(2) "Airborne Toxic Control Measure" (ATCM) – Recommended methods or range of methods that reduce, avoid, or eliminate the emissions of a TAC promulgated by CARB pursuant to the provisions of California Health and Safety Code §39658.

(3) "Best Available Control Technology for Toxics" (T-BACT) – the most stringent emissions limitation or control technique for Toxic Air Contaminants or Regulated Toxic Substances which:

(i) Has been achieved in practice for such permit unit category or class of source; or

(ii) Is any other emissions limitation or control technique, including process and equipment changes of basic and control equipment, found by the APCO to be technologically feasible for such class or category of sources, or for a specific source.

(4) "Cancer Burden" - The estimated increase in the occurrence of cancer cases in a population resulting from exposure to carcinogenic air contaminants.

(5) "Case-by-Case Maximum Achievable Control Technology Standard" (Case-by-Case MACT) – An emissions limit or control technology that is applied to a new or Relocated Facility or Emissions Unit where USEPA has not yet promulgated a

MACT standard pursuant to 42 U.S.C. §7412(d)(3) (FCAA §112(d)(3). Such limit or control technique shall be determined pursuant to the provisions of 40 CFR 63.43.

(6) "Contemporaneous Risk Reduction" - Any reduction in risk resulting from a decrease in emissions of Toxic Air Contaminants at the facility which is real, enforceable, quantifiable, surplus and permanent.

(7) "Hazard Index" (HI) – The total acute or chronic non-cancer Hazard Quotient for a substance by toxicological endpoint.

(8) "Hazard Quotient" (HQ) – The estimated ambient air concentration divided by the acute or chronic reference exposure for a single substance and a particular endpoint.

(9) "Hazardous Air Pollutant" (HAP) – Any air pollutant listed pursuant to 42 U.S.C. §7412(b) (Federal Clean Air Act §112(b)) or in regulations promulgated thereunder.

(10) "Health Risk Assessment" (HRA) – A detailed and comprehensive analysis prepared pursuant to the most recently published District *Health Risk Assessment Guidelines* to evaluate and predict the dispersion of Toxic Air Contaminants and Regulated Toxic Substances in the environment, the potential for exposure of human population and to assess and quantify both the individual and population wide health risks associated with those levels of exposure. Such document shall include details of the methodologies and methods of analysis which were utilized to prepare the document.

(11) "High Priority" – A Facility or Emissions Unit for which any Prioritization Score for cancer, acute non-cancer health effects or chronic non-cancer health effects is greater than or equal to ten (10).

(12) "Intermediate Priority" – A Facility or Emissions Unit for which any Prioritization Score for cancer, acute non-cancer health effects or chronic non-cancer health effects is greater than or equal to one (1) and less than ten (10).

(13) "Low Priority" – A Facility or Emissions Unit for which all Prioritization Scores for cancer, acute non-cancer health effects or chronic non-cancer health effects are less than one (1).

(14) "Maximum Achievable Control Technology Standard" (MACT) – The maximum degree of reduction in emissions of HAPs, including prohibitions of such emissions where achievable, as promulgated by USEPA pursuant to 42 U.S.C. §7412(d)(3) (Federal Clean Air Act §112(d)(3)).

(15) "Maximum Individual Cancer Risk" (MICR) – The estimated probability of a potential maximally exposed individual contracting cancer as a result of exposure

to carcinogenic air contaminants over a period of 70 years for residential locations and 46 years for worker receptor locations.

(16) "Moderate Risk" – A classification of a Facility or Emission Unit for which the HRA Report indicates the MICR is greater than one (1) in one million (1×10^{-6}) at the location of any receptor.

(17) "Modification" (Modified) – Any physical or operational change to a Facility or an Emissions Unit to replace equipment, expand capacity, revise methods of operation, or modernize processes by making any physical change, change in method of operation, addition to an existing Permit Unit and/or change in hours of operation, including but not limited to changes which results in the emission of any Hazardous Air Pollutant, Toxic Air Contaminant, or Regulated Toxic Substance or which results in the emission of any Hazardous Air Pollutant, Toxic Air Contaminant, or Regulated Toxic Substance not previously emitted.

(a) A physical or operational change shall not include:

(i) Routine maintenance or repair; or

(ii) A change in the owner or operator of an existing Facility with valid PTO(s); or

(iii) An increase in the production rate, unless:

a. Such increase will cause the maximum design capacity of the Emission Unit to be exceeded; or

b. Such increase will exceed a previously imposed enforceable limitation contained in a permit condition.

(iv) An increase in the hours of operation, unless such increase will exceed a previously imposed enforceable limitation contained in a permit condition.

(v) An Emission Unit replacing a functionally identical Emission Unit, provided:

a. There is no increase in maximum rating or increase in emissions of any HAP, TAC or Regulated Toxic Substance; and

b. No ATCM applies to the replacement Emission Unit.

(vi) An Emissions Unit which is exclusively used as emergency standby equipment provided:

a. The Emissions Unit does not operate more than 200 hours per year; and

b. No ATCM applies to the Emission Unit.

(vii) An Emissions Unit which previously did not require a written permit pursuant to District Rule 219 provided:

a. The Emissions Unit was installed prior to the amendment to District Rule 219 which eliminated the exemption; and

b. A complete application for a permit for the Emission Unit is received within one (1) year after the date of the

amendment to District Rule 219 which eliminated the exemption.

(viii) An Emissions Unit replacing Emissions Unit(s) provided that the replacement causes either a reduction or no increase in the cancer burden, MICR, or acute or chronic HI at any receptor location.

(b) Any applicant claiming exemption from this rule pursuant to the provisions of subsection (C)(17)(a) above:

(i) Shall provide adequate documentation to substantiate such exemption; and

(ii) Any test or analysis method used to substantiate such exemption shall be approved by the APCO.

(18) "Office of Environmental Health Hazard Assessment" (OEHHA) – A department within the California Environmental Protection Agency that is responsible for evaluating chemicals for adverse health impacts and establishing safe exposure levels.

(19) "Prioritization Score" – The numerical score for cancer health effects, acute non-cancer health effects or chronic non-cancer health effects for a Facility or Emissions Unit as determined by the District pursuant to California Health and Safety Code §44360 in a manner consistent with the most recently published District Facility Prioritization Guidelines"; the most recently approved OEHHA Unit Risk Factor for cancer potency factors; and the most recently approved OEHHA Reference Exposure Levels for non-cancer acute factors, and non-cancer chronic factors.

(20) "Receptor" – Any location outside the boundaries of a Facility at which a person may be impacted by the emissions of that Facility. Receptors include, but are not limited to residential units, commercial work places, industrial work places and sensitive sites such as hospitals, nursing homes, schools and day care centers.

(21) "Reconstruction" (Reconstructed) – The replacement of components at an existing process or Emissions Unit that in and of itself emits or has the Potential to Emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, whenever:

(a) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable process or production unit; and

(b) It is technically and economically feasible for the reconstructed major source to meet the applicable MACT Standard for new sources.

(22) "Reference Exposure Level" (REL) – The ambient air concentration level expressed in microgram/cubic meter (μ/m^3) at or below which no adverse health effects are anticipated for a specified exposure.

(23) "Regulated Toxic Substance" – A substance which is not a Toxic Air Contaminant but which has been designated as a chemical substance which poses a threat to public health when present in the ambient air by CARB in regulations promulgated pursuant to California Health and Safety Code §44321.

(24) "Relocation" (Relocated) – The removal of an existing permit unit from one location in the District and installation at another location. The removal of a permit unit from one location within a Facility and installation at another location within the same Facility is a relocation only if an increase inMICR in excess of one in one million (1×10^{-6}) occurs at any receptor location.

(25) "Significant Health Risk" – A classification of a Facility for which the HRA Report indicates that the MICR is greater than or equal to ten (10) in a million (1×10^{-5}) or that the HI is greater than or equal to one (1).

(26) "Significant Risk" – A classification of a Facility or Emissions Unit for which the HRA Report indicates that the MICR is greater than or equal to one hundred (100) in a million (1×10^{-4}) or that the HI is greater than or equal to ten (10).

(27) "Toxic Air Contaminant" (TAC) – an air pollutant which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health and has been identified by CARB pursuant to the provisions of California Health and Safety Code §39657, including but not limited to, substances that have been identified as HAPs pursuant to 42 U.S.C. Sec. 7412(b) (Federal Clean Air Act §112(b)) and the regulations promulgated thereunder.

(28) "Toxics Emission Inventory Report" – An emissions inventory report for TAC and Toxic Substances prepared for a Facility or Emissions Unit pursuant to the District's *Comprehensive Emission Inventory Guidelines*.

(29) "Unit Risk Factor" (URF) – the theoretical upper bound probability of extra cancer cases occurring from the chemical when the air concentration is expressed in exposure units of per microgram/cubic meter ($(\mu/m^3)^{-1}$).

(D) Initial Applicability Analysis

(1) The APCO shall analyze the Comprehensive Emissions Inventory Report or Comprehensive Emissions Inventory Report Update which was submitted pursuant to District Rule 1302(B)(1)(b) within thirty (30) days of receipt or after such longer period as the APCO and the applicant agree to in writing, to determine if the new, Modified, Relocated, Emissions Unit or Reconstructed Facility is subject to provisions (E) or (F) of this rule.

(a) If the Facility or Emissions Unit is subject to the State T-NSR pursuant to Section (B)(2), then the APCO shall perform the analysis required pursuant to Section (E).

(b) If the Facility is subject to the Federal T-NSR pursuant to Section (B)(3), then the APCO shall perform the analysis required pursuant to Section (F).

(c) If the Facility or Emissions Unit is subject to both the State T-NSR pursuant to Section (B)(2) and the Federal T-NSR pursuant to Section (B)(3) then the APCO shall perform the analysis required pursuant to Section (E) followed by the analysis pursuant to Section (F).

(d) If the provisions of this Rule are not applicable to the Facility or Emissions Unit then the APCO shall continue the permit analysis process commencing with the provisions of District Rule 1302(C)(~~3~~5).

(E) State Toxic New Source Review Program Analysis (State T-NSR)

(1) ATCM Requirements

(a) The APCO shall analyze the application and Comprehensive Emission Inventory Report within thirty (30) days of receipt or after such longer period as the APCO and the applicant agree to in writing, for the new or modified Emission Units(s) and determine if any currently enforceable ATCM applies to the Emissions Unit(s).

(b) If an ATCM applies to the new or modified Emission Units(s) the APCO shall:

(i) Add the requirements of the ATCM or of any alternative method(s) submitted and approved pursuant to Health & Safety Code §39666(f) to any ATC or PTO issued pursuant to the provisions of this Regulation or District Regulation II whichever process is utilized to issue the permit(s); and

(ii) Continue the analysis with Section (E)(2).

(c) If no ATCM applies to the proposed new or modified Emissions Unit the APCO shall continue the analysis with Section (E)(2).

(2) Emission Unit Prioritization Score

(a) The APCO shall analyze the application and Comprehensive Emission Inventory Report for the Emission Unit(s) and calculate three (3) prioritization scores for each new or modified Emission Unit.

(i) Prioritization Scores shall be calculated for carcinogenic effects, non-carcinogenic acute effects and non-carcinogenic chronic effects.

(ii) Prioritization Scores shall be calculated utilizing the most recently approved CAPCOA *Facility Prioritization Guidelines*; the most recently approved OEHHA Unit Risk Factor for cancer potency factors; and the most recently approved OEHHA Reference Exposure Levels for non-cancer acute factors, and non-cancer chronic factors.

(iii) Prioritization Scores may be adjusted utilizing any or all of the following factors if such adjustment is necessary to obtain an accurate assessment of the Facility.

a. Multi-pathway analysis
b. Method of release.
c. Type of Receptors potentially impacted.
d. Proximity or distance to any Receptor.
e. Stack height.
f. Local meteorological conditions.
g. Topography of the proposed new or Modified Facility and surrounding area.
h. Type of area.
g. Screening dispersion modeling.

(b) If all Prioritization Scores indicate that the Emission Unit is categorized as Low or Intermediate Priority, the APCO shall:

(i) Determine if the Facility is subject to Federal T-NSR pursuant to subsection (B)(3) and continue the analysis with Section (F).

(ii) If the Facility or Emission Unit is not subject to Federal T-NSR, continue the permit analysis process commencing with the provisions of District Rule 1302(C)(~~3~~5).

(c) If any Prioritization Score indicates that the Emission Unit is categorized as High Priority, the APCO shall continue the analysis pursuant to subsection (E)(3).

(3) Emission Unit Health Risk Assessment

(a) The APCO shall notify the applicant in writing that the applicant is required to prepare and submit an HRA for the new or modified Emission Units(s).

(i) The applicant shall prepare the HRA for the new or modified Emission Units(s) in accordance with the District's most recently issued *Health Risk Assessment Plan and Report Guidelines*.

(ii) The HRA for the emission unit shall be submitted by the applicant no later than thirty (30) days after receipt of the written notification from the APCO or after such longer time that the applicant and the APCO may agree to in writing.

(iii) The HRA may include a demonstration of Contemporaneous Risk Reduction pursuant to subsection (E)(4).

(b) The APCO shall approve or disapprove the HRA for the new or modified Emission Units(s) within thirty (30) days of receipt of the plan from the applicant or after such longer time that the applicant and the APCO may agree to in writing.

(c) After the approval or disapproval of the HRA for the new or modified Emission Units(s) the APCO shall transmit a written notice of the approval or disapproval of the HRA plan immediately to the applicant at the address indicated on the application.

(i) If the HRA for the new or modified Emission Units(s) was disapproved the APCO shall specify the deficiencies and indicate how they can be corrected.

a. Upon receipt by the District of a resubmitted HRA a new thirty (30) day period in which the APCO must determine the approval or disapproval of the HRA shall begin.

(d) The APCO shall analyze the HRA for the new or modified Emission Unit(s) to determine the cancer burden for each Emissions Unit(s).

(i) If the cancer burden is greater than 0.5 in the population subject to a risk of greater than or equal to one in one million (1×10^{-6}) the APCO shall immediately notify the applicant that the application will be denied in its current form unless the applicant submits a revised application which reduces the cancer burden to equal or below 0.5 within thirty (30) days of receipt of the notice or after such longer time as both the applicant and the APCO may agree to in writing.

a. If the applicant does not submit a revised application within the time period specified the APCO shall notify the applicant in writing that the application has been denied.

b. If the applicant submits a revised application the analysis process shall commence pursuant to District Rule 1302 as if the application was newly submitted.

(ii) If the cancer burden is less than or equal to 0.5 in the population subject to a risk of greater than or equal to one in one million (1×10^{-6}) the APCO shall continue with the analysis pursuant to subsection (E)(3)(e).

(e) The APCO shall analyze the HRA for the new or modified Emissions Unit(s) and determine the risk for each Emissions Unit.

(i) If the HRA indicates that the Emissions Unit(s) are less than a Moderate Risk then the APCO shall continue the analysis purusant to section (E)(3)(f).

(ii) If the HRA indicates that the Emissions Unit(s) are a Moderate Risk but less than a Significant Health Risk then the APCO shall:

a. Add requirements for each Emissions Unit sufficient to ensure T-BACT is applied to any ATC or PTO issued pursuant to the provisions of District Regulation XIII or Regulation II whichever process is utilized to issue the permit(s); and

b. Continue with the analysis pursuant to subsection (E)(3)(f).

(iii) If the HRA indicates that an Emission Unit is a Significant Health Risk but less than a Significant Risk then the APCO shall:

a. Add requirements for each Emissions Unit sufficient to ensure T-BACT is applied to any ATC or PTO issued pursuant to the provisions of District Regulation XIII or Regulation II whichever process is utilized to issue the permit(s); and

b. Require the Facility to perform a public notification pursuant to the District's *Public Notificication Guidelines* and District Rule 1520; and

c. Continue with the analysis pursuant to subsection (E)(3)(f).

(iv) If the HRA indicates that an Emissions Unit is a Significant Risk then the APCO shall immediately notify the applicant that the application will be denied in its current form unless the applicant submits a revised application which reduces the risk below that of Significant Risk within thirty (30) days of receipt of the notice or after such longer time as both the applicant and the APCO may agree to in writing.

(f) If the HRA Report indicates that all new or modified Emission Unit(s) are less than a Significant Risk then the APCO shall determine if the Facility or Emission Unit is subject to Federal T-NSR pursuant to subsection (B)(3).

(i) If the Facility or Emission Unit is subject to the Federal T-NSR, continue the analysis with Section (F).

(ii) If the Facility or Emission Unit is not subject to the Federal T-NSR, continue the permit analysis process commencing with the provisions of District Rule 1302(C)(~~3~~5).

(4) Contemporaneous Risk Reduction

(a) Applicant may, as a part of an HRA required pursuant to subsection (E)(3), provide Contemporaneous Risk Reduction to reduce the Facility risk from the new or modified Emissions Units.

(b) Contemporaneous Risk Reductions shall be:

(i) Real, enforceable, quantifiable, surplus and permanent; and
(ii) Calculated based on the actual average annual emissions as determined by the APCO based upon verified data for the two year period immediately preceding the date of application; and
(iii) Accompanied by an application for modification of the Emission Unit(s) which cause the Contemporaneous Risk Reduction.

(c) The APCO shall analyze the Contemporaneous Risk Reduction and determine if any receptor will experience a total increase in MCIR due to the cumulative impact of the Emission Unit(s) and the Emission Unit(s) which cause the Contemporaneous Risk Reduction.

(i) The APCO shall deny a Contemporaneous Risk Reduction when such an increase occurs unless:
a. The Contemporaneous Risk Reduction is:
1. Within 328 feet (100 meters) of the new or modified Emission Unit(s); or
2. No receptor location will experience a total increase in MCIR of greater than one in one million (1.0×10^{-6}) due to the cumulative impact of the Emission Unit(s) and the Emission Unit(s) which cause the Contemporaneous Risk Reduction.
b. T-BACT is applied to any Emissions Unit which is a Moderate Risk or greater.

(d) The APCO shall analyze the Contemporaneous Risk Reduction and determine if any receptor will experience an increase in total acute or chronic HI due to the cumulative impact of the new or modified Emission Unit(s) and the Emission Unit(s) which cause the Contemporaneous Risk Reduction.

(i) The APCO shall deny a Contemporaneous Risk Reduction when such an increase occurs unless:
a. The Contemporaneous Risk Reduction is:
1. Within 328 feet (100 meters) of the new or modified Emission Unit(s); or
2. No receptor location will experience an increase in total acute or chronic HI of more than .1 due to the cumulative impact of the new or modified Emission Unit(s) and the Emission Unit(s) which cause the Contemporaneous Risk Reduction; and

(e) Any Contemporaneous Risk Reduction must occur before the start of operations of the Emissions Unit(s) which increase the risk.

(F) Federal Toxic New Source Review Program Analysis (Federal T-NSR)

(1) MACT Standard Requirements

(a) The APCO shall analyze the application and Comprehensive Emission Inventory and determine if any currently enforceable MACT standard applies to the new or Reconstructed Facility or Emissions Unit.

(b) If a MACT standard applies to the new or Reconstructed Facility or Emissions Unit the APCO shall:

(i) Add the requirements of the MACT standard to any ATC or PTO issued pursuant to the provisions of District Regulation XIII or Regulation II whichever process is utilized to issue the permit(s); and

(ii) Continue the analysis with District Rule 1302(C)(~~3~~5).

(c) If no MACT standard applies to the new or Reconstructed Facility or Emissions Unit the APCO shall continue the analysis with Section (G)(2).

(2) Case-by-Case MACT Standards Requirements

(a) The APCO shall determine if a Case-by-Case MACT standard applies to the proposed new or Reconstructed Facility or Emissions Unit.

(b) If a Case-by-Case MACT standard applies to the new or Reconstructed Facility or Emissions Unit the APCO shall:

(i) Notify the applicant in writing that the applicant is required to prepare and submit a Case-by-Case MACT application.

a. The applicant shall prepare the Case-by-Case MACT application in accordance with the provisions of 40 CFR 63.43(e).

b. The Case-by-Case MACT application shall be submitted no later than thirty (30) days after receipt of the written notification from the APCO or after such longer time that the applicant and the APCO may agree to in writing.

(ii) Preliminarily approve or disapprove the Case-by-Case MACT application within 30 days after receipt of the application or after such longer time as the applicant and the APCO may agree to in writing.

(iii) After the approval or disapproval of the Case-by-Case MACT application the APCO shall transmit a written notice of the approval or disapproval to the applicant at the address indicated on the application.

a. If the Case-by-Case MACT application is disapproved the APCO shall specify the deficiencies, indicate how they can

be corrected and specify a new deadline for submission of a revised Case-by-Case MACT application.

(iv) The APCO shall review and analyze the Case-by-Case MACT application and submit it to USEPA along with any proposed permit conditions necessary to enforce the standard.

(v) Provide public notice and comment of the proposed Case-by-Case MACT standard determination pursuant to the procedures in 40 CFR 63.42(h).

a. Such notice may be concurrent with the notice required under District Rule 1302(D)(3) if notice is required pursuant to that provision.

(vi) Add the approved Case-by-Case MACT standard requirements or conditions to any ATC or PTO issued pursuant to the provisions of District Regulation XIII or Regulation II whichever process is utilized to issue the permit(s); and

(vii) Continue the analysis with District Rule 1302(C)(~~3~~5).

(c) If a Case-by-Case MACT standard does not apply to the new or Reconstructed Facility or Emissions Unit the APCO shall continue the analysis with District Rule 1302(C)(~~3~~5).

(G) Most Stringent Emission Limit or Control Technique

(1) If a Facility or Emission Unit is subject to more than one emission limitation pursuant to sections (E) or (F) of this rule the most stringent emission limit or control technique shall be applied to the Facility or Emission Unit.

(i) Notwithstanding the above, if a Facility or Emission Unit is subject to a published MACT standard both the MACT standard and the emissions limit or control technique, if any, required pursuant to sections (E) shall apply unless the District has received delegation from USEPA for that particular MACT standard pursuant to the provisions of 42 U.S.C. §7412(l) (FCAA §112(l)).

(H) Interaction with Air Toxic "Hot Spots" Program for Existing Facilities

(1) Nothing in this Rule shall be construed to exempt an existing Facility from compliance with the provisions of District Rule 1520.

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Appendix "B"

Public Notice Documents

1. Proof of Publication – Daily Press April 27, 2006
2. Proof of Publication – Riverside Press Enterprise April 27, 2006

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PROOF OF PUBLICATION

(2015.5 C.C.P.)

STATE OF CALIFORNIA,
County of San Bernardino

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the publisher of the DAILY PRESS, a newspaper of general circulation, published in the City of Victorville, County of San Bernardino, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Bernardino, State of California, under the date of November 21, 1938, Case Number 43096, that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

April 27

all in the year 20 06 .

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated this 27th **day**
of April , **20** 06 .

Signature
Leslie Jacobs

This space is the County Clerk's Filing Stamp

FILED
MOJAVE DESERT AQMD
CLERK OF THE BOARD
MAY 04 2006
BY

Proof of Publication of

NOTICE OF HEARING

NOTICE OF HEARING

NOTICE IS HEARBY GIVEN that the Governing Board of the Mojave Desert Air Quality Management District (MDAQMD) will conduct a public hearing on May 22, 2006 at 10:00 A.M. to consider amendments to Regulation XIII – *New Source Review* (specifically Rules 1302 – *Procedure*, 1305 – *Emissions Offsets* and 1320 *a New Source Review for Toxic Air Contaminants*) and adoption of new Rule 1310 – *Federal Major Facilities and Federal Major Modifications*.

SAID HEARING will be conducted in the Governing Board Chambers located at the MDAQMD offices 14306 Park Avenue, Victorville, CA 92392 where all interested persons may be present and be heard. Copies of the proposed amendments to Regulation XIII, proposed new Rule 1310 and the Staff Report are on file and may be obtained from the Clerk of the Governing Bard at the MDQMD Offices. Written comments may be submitted to Eldon Heaston, Executive Director at the above office address. Comments must be received no later than May 22, 2006 to be considered. If you have any questions you may contact Karen Nowak, Deputy District Counsel at (760) 245-1661 x6810 for further information.

The proposed amendments to Regulation XIII and proposed new Rule 1310 are required to comply with the requirements of 40 CFR 51.160 and Health & Safety Code §§42500 et seq. The proposed changes will bifurcate the NSR process imposing the current requirements on all sources subject to the regulation and adding additional requirements for those large sources which are applying for Federal Major Modifications as defined. In addition, the proposed changes provide that certain large Federal Major Sources will be able to apply for and receive a plant wide applicability limit that would allow them to bypass the additional requirements for a particular period of time.

Pursuant to the California Environmental Quality Act (CEQA) the MDAQMD has determined that a Categorical Exemption (Class 8 – 14 Cal. Code Reg §15308) applies and has prepared a *Notice of Exemption* for this action.

Michele Baird
Clerk of the Board
Mojave Desert Air Quality Management District

Published in the Daily Press
April 27, 2006
(Th-41)

THE PRESS-ENTERPRISE

3512 Fourteenth Street
Riverside CA 92501-3878
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Publication(s): Press-Enterprise

PROOF OF PUBLICATION OF

Ad Desc.: Regulation XIII

I am a citizen of the United States. I am over the age of eighteen years and not a party to or interested in the above entitled matter. I am an authorized representative of THE PRESS-ENTERPRISE, a newspaper of general circulation, printed and published daily in the city of Riverside, County of Riverside, and which newspaper has been adjudicated a newspaper of general circulation by the Superior Court of the County of Riverside, State of California, under date of April 25, 1952, Case Number 54446, under date of March 29, 1957, Case Number 65673 and under date of August 25, 1995, Case Number 267864; that the notice, of which the annexed is a printed copy, has been published in said newspaper in accordance with the instructions of the person(s) requesting publication, and not in any supplement thereof on the following dates, to wit:

04-27-06

I Certify (or declare) under penalty of perjury that the foregoing is true and correct.

Date: Apr. 27, 2006
At: Riverside, California

MOJAVE DESERT AQMD
14306 PARK AVE
ATTN: MICHELE BAIRD
VICTORVILLE CA 92392

Ad #: 7658152

PO #:

Agency #: _____

Ad Copy:

NOTICE OF HEARING
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SAID HEARING will be conducted in the Governing Board Chambers located at the MDAQMD offices 14306 Park Avenue, Victorville, CA 92392 where all interested persons may be present and be heard. Copies of the proposed amendments to Regulation XIII, proposed new Rule 1310 and the Staff Report are on file and may be obtained from the Clerk of the Governing Bard at the MDQMD Offices. Written comments may be submitted to Elden Heaston, Executive Director at the above office address. Comments must be received no later than May 22, 2006 to be considered. If you have any questions you may contact Karen Nowak, Deputy District Counsel at (760) 245-1661 x6810 for further information.

The proposed amendments to Regulation XIII and proposed new Rule 1310 are required to comply with the requirements of 40 CFR 51.160 and Health & Safety Code §§42500 et seq. The proposed changes will bifurcate the NSR process imposing the current requirements on all sources subject to the regulation and adding additional requirements for those large sources which are applying for Federal Major Modifications as defined. In addition, the proposed changes provide that certain large Federal Major Sources will be able to apply for and receive a plant wide applicability limit that would allow them to bypass the additional requirements for a particular period of time.

Pursuant to the California Environmental Quality Act (CEQA) the MDAQMD has determined that a Categorical Exemption (Class 8 - 14 Cal. Code Reg §15308) applies and has prepared a Notice of Exemption for this action.

Michele Baird
Clerk of the Board
Mojave Desert Air Quality Management District 4/27

FILED
MOJAVE DESERT AQMD
CLERK OF THE BOARD
MAY 08 2006
BY

Appendix "C"

Public Comments and Responses

1. CARB letter of January 25, 2006
2. CARB letter of March 22, 2006
3. Adams, Broadwell, Joseph & Cardozo Letter of April 24, 2006
4. CARB letter of May 15, 2006
5. Ft. Irwin E-Mail of June 28, 2006

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STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
AIR RESOURCES BOARD

P. O. Box 2815
Sacramento, California 95812

January 25, 2006

Transmittal
of
ARB Staff Rule Review Comments

To: Mr. Charles L. Fryxell, Air Pollution Control Officer
Mojave Desert Air Quality Management District
Telephone Number: (661) 723-8070
e-mail: cfryxell@mdaqmd.ca.gov

From: Dave Brown, (916) 324-1129
e-mail: dabrown@arb.ca.gov

We received the following draft rules on December 27, 2005, for review:

1302 Procedure (for amendment)
1305 Emissions Offsets (for amendment)
1310 Federal Major Facilities and Federal Major Modifications (new rule)
1320 New Source Review for Toxic Air Contaminants (for amendment)

We have reviewed the rules and have the comments on the following pages. We believe that our comments are important to the effectiveness and enforceability of the rules.

On January 18, 2006, Mr. James McCormack of the Stationary Source Enforcement Section, discussed Comment 1 with Ms. Karen Nowak of your staff. In addition, on January 10, 2006, Ms. Liz Ota of the Regulatory Assistance Section discussed with Ms. Nowak Comments 2 through 7 pertaining to the virtually identical changes proposed for the Mojave Desert AQMD rules. In this discussion, it was agreed that staff will focus on overall general issues.

If you have any questions about Comment 1, please contact Mr. Carl Brown, manager of the Stationary Source Enforcement Section at (916) 323-8417. If you have any questions about Comments 2 through 7, contact Ms. Kitty Howard, Manager of the Regulatory Assistance Section, at (916) 324-1362.

Rule review comments are on the following 2 pages

Date: January 25, 2006

Air Resources Board Staff Comments on
Mojave Desert Air Quality Management District
Draft Rules 1302, 1305, 1310, and 1320

1. General: We recommend that the District define or provide references for all acronyms and terms used in the rules.

Rule 1302 – Procedure (for amendment)

2. Because the federal changes to New Source Review cover only modifications to major sources, it is important that the District's rule changes effectively exempt only those sources that would no longer be considered major modifications under the new federal rules from requirements for Statewide compliance certification and alternative siting analysis. Accordingly, the proposed changes throughout this rule that refer to new federal major facilities should be deleted.

3. Using our current SB 288 implementation guidance, the proposed changes to Section (C)(5)(iii) that establish separate criteria for the approval of offsets used for different purposes (some would be subject to approval by the U.S. EPA and some would not) may potentially be a relaxation relative to the rule that existed on December 30, 2002. Such rule relaxations are generally barred by SB 288. We recommend that the proposed changes be deleted.

4. The proposed separation in section (C) of State and federal requirements is awkward and not completely accurate, since some of the "State requirements" appear to reflect District, State, and/or federal requirements. Once new major sources are removed from Rule 1310, the distinction between State and federal requirements becomes even more problematic to draw using the proposed approach. At this early point in our review, it appears that the District may need to make some basic changes to the approach being proposed in this section. We are aware that the District does not wish to take the approach used by the South Coast Air Quality Management District in its Rule 1316, which incorporates the federal New Source Review changes via a narrow exemption from alternative siting analyses, because it would be too cumbersome.

Rule 1305 Emissions Offsets (for amendment)

5. As in Rule 1302, the proposed changes throughout Rule 1305 that establish separate criteria for the approval of offsets used for different purposes (some would be subject to approval by U.S. EPA and some would not) may potentially be a relaxation relative to the rule that existed on December 30, 2002. Such rule relaxations are generally barred by SB 288. We recommend that the proposed changes be deleted.

Rule 1310 Federal Major Facilities and Federal Major Modifications (new rule)

6. As in Rule 1302, because the federal changes to New Source Review affect major modifications only, this rule should not include new major sources.

7. We recommend that the District consult with staff at U.S. EPA Region 9 to ensure that the proposed changes include only those federal provisions that are currently in effect. For example, some of the proposed rule changes originate from the federal "Routine Maintenance, Repair and Replacement" rule, which is currently stayed by court order. Clarification is also needed regarding the "reasonable possibility test" incorporated into proposed section (D)(4).

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Responses to comments, CARB Letter 1/27/06:

Comment 1-1: Define or provide reference for all acronyms.

Response 1-1: All acronyms are defined in District Rule 1301 with the exception of rule specific definitions found in proposed new Rule 1310 and current Rule 1320. To provide a cross reference to each and every acronym contained in Regulations XIII would increase the size and complexity of this regulation by at least 2 fold. The District respectfully declines to make this change.

Comment 1-2: Delete references to new Federal Major Facilities in proposed Rule 1302.

Response 1-2: References have been deleted through the proposed amendments to all provisions referring to new Federal Major Facilities. Please note however that some references remain. Those references and provisions regarding Plant Wide Applicability Limits (PALS) use the Federal Major Facility definition and language and as such are retained.

Comment 1-3: Relaxation of offset criteria in proposed Rule 1302 are against CARB current SB288 guidance, please delete.

Response 1-3: SB288 (Health & Safety Code §§42504) only prohibits changes to requirements imposed upon the stationary sources, not to procedural agreements regarding review between agencies. The proposed amendments regarding offset veto authority by USEPA do not change substantive requirements for stationary sources and as such are not prohibited.

Comment 1-4: The proposed separation of State and Federal requirements in proposed Rule 1302 is awkward. Why not use exemptions as SCAQMD does?

Response 1-4: Without completely changing the structure of Regulation XIII and amending each and every rule in the regulation use of an exemption format is impractical. The format used is familiar to stationary sources within the MDAQMD and has been favorably complemented by such sources for its clarity and understandability.

Comment 1-5: Relaxation in offsets criteria in Rule 1305 are prohibited by SB288.

Response 1-5: The proposed changes to Rule 1305 do not relax offset criteria. They only change procedural arrangements between agencies and do not affect the requirements on stationary sources. Therefore, such proposed amendments are not prohibited.

Comment 1-6: Remove references to new Federal Major Facilities in proposed Rule 1310.

Response 1-6: Requirements for new Federal Major Facilities have been removed. References are retained to set forth criteria and applicability for PALs.

Comment 1-7: Consult with USEPA staff to ensure requirements are currently in effect.

Response 1-7: USEPA staff has been consulted. Routine Maintenance and Repair definition has been removed pursuant to USEPA direction as a non-effective portion of the NSR reform regulation despite certain internal regulatory cross references to such definition in effective portions of the regulation. The "Reasonable Possibility Test" has also been removed at USEPA's direction.

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
AIR RESOURCES BOARD

P. O. Box 2815
Sacramento, California 95812

March 22, 2006

Transmittal
of
ARB Staff Rule Review Comments

To: Mr. Charles L. Fryxell, Air Pollution Control Officer
Mojave Desert Air Quality Management District
Telephone Number: (661) 723-8070
e-mail: cfryxell@mdaqmd.ca.gov

From: Dave Brown, (916) 324-1129
e-mail: dabrown@arb.ca.gov

The following rules, which are scheduled for a public hearing to be held by your District Board on May 22, 2006, were received by us on March 8, 2006, for our review:

1302 Procedure (for amendment)
1305 Emissions Offsets (for amendment)
1310 Federal Major Facilities and Federal Major Modifications (new rule)
1320 New Source Review for Toxic Air Contaminants (for amendment)

We have reviewed the rules and have the comments on the following pages. We believe that our comments are important to the effectiveness and enforceability of the rules.

On March 16, 2006, Ms. Liz Ota of the Regulatory Assistance Section discussed our comments with Ms. Karen Nowak of your staff.

If you have any questions about our comments, please contact Ms. Kitty Howard, Manager of the Regulatory Assistance Section, at (916) 324-1362.

Rule review comments are on the following 2 pages

Date: March 22, 2006

Air Resources Board Staff Comments on
Mojave Desert Air Quality Management District
Proposed Rules 1302, 1305, 1310, and 1320

1. General: The federal changes to New Source Review which these rules are addressing did not affect any federal requirements for new major sources. Existing New Source Review requirements should thus not be changed for such sources in the District's rules. Specifically, the major source threshold should still be based on a source's potential to emit (not the new federal calculation procedures for modifications) and the federal requirements for an alternative siting analysis and Statewide compliance certification should still be retained for new major sources. Many of the specific comments listed below relate to this general comment.

2. General: Although not listed in the specific comments below, various proposed rule changes that have the effect of reducing the number of sources that are required to provide a Statewide compliance certification may be challenged regarding whether such changes are allowed under Senate Bill 288. The Air Resources Board recently received a petition challenging a similar provision adopted by the San Joaquin Valley Unified Air Pollution Control District. The District may wish to consider excluding these provisions from its rules until such time that there is a clear determination regarding the coverage of Statewide compliance certification under Senate Bill 288.

Rule 1302 Procedure (for amendment)

3. Section (B)(1)(a)(iii) -- Alternative Siting: While the District's proposed language is correct, this section would be clearer if it specified that the requirement for alternative siting analysis also applied to applications for constructing new major sources.

   In addition, the District should consider, as one possible approach for improving clarity, adding a new section after (B)(1)(a)(iii) called "Statewide Compliance Certification" that specifies that applications to construct a new major source or federal major modification need to include such a certification.

4. Section (C)(2) -- Determination of State Requirements: Since this section refers to Rule 1303, which includes State, federal, and local requirements, we recommend that the name for this section remain "Determination of Requirements"

5. Section(C)(3) – Determination of Federal Requirements: For greater clarity, we recommend this section be renamed "Determination of Additional Requirements for Federal Major Modifications and Facilities with Plantwide Applicability Limits."

6. Section (C)(4) – Determination of State and Federal Requirements for Toxic Air Contaminants: We recommend this section be called "Determination of Requirements for Toxic Air Contaminants."

7. Section (C)(5)(iii)(a): The provisions of this section should include major sources, since these are also "federal sources."

Rule 1310 Federal Major Facilities and Federal Major Modifications (new rule)

8. Section (C)(12) – Definition of "Process Unit": This definition should be deleted because it was derived from the U.S. EPA's Routine Maintenance, Repair, and Replacement Rule, which is currently stayed by court order.

9. Section (D)(1)(a) – Federal Major Facility Threshold: Nothing in the U.S. EPA's changes to New Source Review alters how new major sources are treated. Thus, the major facility threshold should still be determined using a facility's potential to emit, not its projected actual emissions. This section should be corrected accordingly, including an appropriate citation of District Rule 1304.

10. Section (D)(2)(b): For greater clarity, we recommend that the word "category" be deleted.

11. Section (E)(1)(a): Nothing in the U.S. EPA's changes to New Source Review alters how new major sources are treated. Thus, the new federal calculations should not be used to determine if a facility is a Federal Major Facility; that is determined by a facility's potential to emit. This section should be corrected accordingly, including an appropriate citation of District Rule 1304. (See comment on Section (D)(1)(a) above.)

12. Section (F)(2)(a): A typographic error in the citation of "40 CFR 51.156" should be corrected to "40 CFR 51.165."

13. Section (F)(3)(a): A typographic error in the citation of "Rule 1310(C)(3)" should be corrected to "Rule 1310(D)(3)."

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Responses to Comments, CARB Letter of 3/23/06

Comment 2-1: The federal changes to New Source Review did not affect any federal requirements for new major sources:

Response 2-1: The District has removed specific references in the proposed provisions that might be construed to apply to new major sources. Please note, however, that the definitions and thresholds for Federal Major Sources must remain in proposed new Rule 1310 to implement the Plantwide Applicability Limit provisions found in 40 CFR 51.165.

Comment 2-2: The proposed changes may have the effect of reducing the number of sources required to submit statewide certifications.

Response 2-2: Historically in the MDAQMD the Facilities that have been required to submit statewide certifications of compliance are those Facilities that would have been subject to the provisions of proposed Rule 1310. Therefore, the MDAQMD believes that in actuality the number of Facilities required to submit this level of documentation should remain the same. The MDAQMD will await the outcome of the challenge to the San Joaquin Valley Unified APCD's rules and will perform additional rulemaking if this type of change is found to be in violation of SB288(H&S Code §§45000 et seq.).

Comment 2-3a: The alternative siting analysis section would be clearer if it specified that this requirement would also apply to new major sources.

Response 2-3a: The language of 1302(B)(1)(a)(iii) has been modified to read "any other new or modified facility required to perform…".

Comment 2-3b: The district should consider a new section titled Statewide Compliance Certification.

Response 2-3b: The district has added such a section as 1302(B)(1)(a)(iv) and has renumbered subsequent sections and cross-references.

Comment 2-4: Rename 1302(C)(2) "Determination of Requirements".

Response 2-4: Section has been renamed.

Comment 2-5: Rename 1302(C)(3) "Determination of Additional Requirements for Federal Major Modifications and Facilities with Plantwide Applicability Limits".

Response 2-5: Section has been renamed "Determination of Additional Federal Requirements".

Comment 2-6: Rename 1302(C)(4) "Determination of Requirements for Toxic Air Contaminants".

Response 2-6: Section has been renamed.

Comment 2-7: Section 1302(C)(5)(iii)(a) should include major sources.

Response 2-7: Section 1302(C)(5)(iii)(a) only includes Federal Major Sources and Federal Major Modifications in a Federal non-attainment area for USEPA veto requirement at the request of USEPA. USPEA retains full commenting authority over all major sources and modifications regardless of location. The MDAQMD is required elsewhere in Regulation XIII to respond to all comments and provide adequate reasons if such comments are not acted upon.

Comment 2-8: Remove definition of "Process Unit".

Response 2-8: Definition has been removed.

Comment 2-9: Federal Major Facility threshold determination should be calculated using current methods.

Response 2-9: Cross-reference to Rule 1304, current calculation methods, has been provided.

Comment 2-10: Delete "category" from 1310(D)(2)(b):

Response 2-10: Word deleted.

Comment 2-11: Federal Major Facility threshold determination should be calculated using current methods.

Response 2-11: Language referencing Federal Major Facilities has been removed from 1310(E)(1)(a).

Comment 2-12: Typographical error in 1310(F)(2)(a).

Response 2-12: Typographical error corrected.

Comment 2-13: Typographical error in 1310(F)(3)(a).

Response 2-13: Typographical error corrected.

ADAMS BROADWELL JOSEPH & CARDOZO
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037
TEL: (650) 589-1660
FAX: (650) 589-5062
gsmith@adamsbroadwell.com

SACRAMENTO OFFICE
1225 8th STREET, SUITE 550
SACRAMENTO, CA 95814-4810
TEL: (916) 444-6201
FAX: (916) 444-6209

DANIEL L. CARDOZO
RICHARD T. DRURY
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
MARC D. JOSEPH
OSHA R. MESERVE
SUMA PEESAPATI
GLORIA D. SMITH

FELLOW
KEVIN S. GOLDEN

OF COUNSEL
THOMAS R. ADAMS
ANN BROADWELL

April 24, 2006

VIA EMAIL and US MAIL

Eldon Heaston
Executive Director
Mojave Desert Air Quality Management District
14306 Park Avenue
Victorville, CA 92392-2310
eheaston@mdaqmd.ca.gov

Re: Comments on Proposed Amendment to Regulation XIII

Dear Mr. Heaston:

On behalf of California Unions for Reliable Energy ("CURE"), this letter provides comments on the Mojave Desert Air Quality Management District's ("District") proposed amendment to Regulation XIII (New Source Review) the adoption of which will implement federal New Source Review ("NSR") rollbacks EPA implemented in 2002. As shown below, the District's proposed rule impermissibly weakens the current definition of "major modification" which, in turn, creates new exemptions to the District's NSR requirements. This new definition and the NSR exemptions are in direct violation of Senate Bill 288.

I. Introduction

CURE is a coalition of unions whose members construct, maintain and operate power plants in California. Any changes to the District's rules affect the way power plants operate within the District. Operational changes impact union members' economic and environmental interests. For example, degradation of air quality jeopardizes future jobs by causing construction moratoria, depleting limited air pollutant emissions offsets, and putting other stresses on the environmental carrying capacity of the state. For these reasons, CURE is concerned about the

District's proposal to weaken California's NSR requirements by adopting the proposed Regulation XIII amendment.

On November 29, 2005, CURE filed comments on the rule changes proposed by the South Coast Air Quality Management District. CURE specifically commented that the South Coast's exemption allowing sources to avoid certification of statewide compliance was unlawful under S.B. 288. The South Coast originally structured its proposed exemption to statewide compliance in a manner substantively identical to this District's proposal. In response to CURE's comments, the South Coast District's Governing Board, on December 2, 2005, voted unanimously to delete the statewide compliance exemption during its hearing on the proposed rule.

CURE likewise commented on San Joaquin Valley Air Pollution Control District's ("SJVAPCD") new source review rule (Rule 2201). In its hearing on the proposed Rule 2201 amendments, the SJVAPCD Governing Board disregarded CURE's comments. Accordingly, on January 13, 2006, CURE filed a Petition entitled "Public Hearing on San Joaquin Valley Air Pollution Control District ("SJVAPCD") New Source Review Rule (Rule 2201)" to the California Air Resources Board ("CARB").

In its appeal, CURE specifically commented that the SJVAPCD's exemption allowing sources to avoid certification of statewide compliance was unlawful under S.B. 288. As CARB considers CURE's petition regarding SJVAPCD's new source review amendments, CARB commented to the Mojave Desert District on its new source review amendments that due to this pending petition, "[t]he District may wish to consider excluding these provisions from its rules until such time that there is a clear determination regarding the coverage of Statewide compliance certification under Senate Bill 288." (MDAQMD Regulation XIII Staff Report – D3, p. C-10.) CURE hereby requests that MDAQMD heed CARB's advice and remove the amendment to Regulation XIII's statewide compliance requirement.

II. California's Response to EPA's NSR Rule Changes

The California legislature responded to EPA's rule change by adopting S.B. 288. (*Codified at* California Health and Safety Code § 42500.) The statute's express purpose is to ensure that California's NSR requirements remain as stringent as those in place on December 30, 2002, despite EPA's rule changes. Importantly, S.B. 288 is consistent with federal law because the federal Clean Air Act expressly

allows states to impose clean air requirements that are more stringent than the federal program. (42 U.S.C. § 7416; CAA § 116.) Specifically, S.B. 288 provides:

> The recent revisions to the federal new source review regulations provide that the states may adopt permitting programs that are "at least as stringent" as the new federal "revised base program," and that the federal regulations "certainly do not have the goal of 'preempting' State creativity or innovation." (*citing* 67 Fed. Reg. 80241 (Dec. 31, 2002).)

(Health & Saf. Code § 42501(i).)

More specific to the District's rulemaking, S.B. 288 is also clear that "[n]o air quality management district or air pollution control district may amend or revise its new source review rules or regulations to be less stringent than those that existed on December 30, 2002." (*Id.* at § 42504 (a) & (b)(1)(B).) More specific still is the prohibition on air districts from relaxing the definition of "major modification" for purposes of NSR. (*Id.* at § 42504(b)(1).) Finally, S.B. 288 prohibits an air district from exempting stationary sources from any requirement of its NSR regulations. (*Id.* at § 42504(b)(1)(D).) Here the District is changing its definition of "major modification" and is providing exemptions to stationary sources from NSR requirements.

In direct violation of S.B. 288's express mandate, the District is proposing to unlawfully amend its Regulation XIII to conform to the EPA's NSR rule changes, thereby rolling back California's own longstanding NSR program.

III. Elimination of Requirement for Certification of Statewide Compliance May Result in Potentially Adverse Impacts on Air Quality

At present, Rule 1302 Section (D)(5)(b)(iii) requires a certification of statewide compliance for all facilities owned by one company before any new project proposed by that company can be approved by the District. The proposed amendment to Regulation XIII removes this requirement from Section 1302 Section (D)(5)(b)(iii) and inserts it into Section 1302 as Section (C)(3)(a)(ii)(b), which would require statewide compliance only for Federal Major Modifications. As the District's own staff report explains, this change "could potentially be interpreted as modifying a requirement on a source." (MDAQMD Regulation XIII Staff Report – D3, p. 15.)

The District justifies this proposed change because "the actual result of this proposed change will be minimal at most," and "there are very few actual situations where a statewide certification would be omitted under the proposed amendments." (*Id.*)

In effect, this new language now exempts projects that do not meet the proposed new definition of "federal major modification" for applicability of NSR requirements from having to provide this statewide certification of compliance. As a result, the proposed amendments to Regulation XIII would allow a company to apply for and receive permits for a project at one of its existing facilities (as long as it does not qualify as a federal major modification) even if that company has another facility in California that is violating the Clean Air Act.

While all regulated sources in California are legally required to comply with the Clean Air Act, violations are common. Since 1996, three-fourths of California's refineries, mills and other surveyed facilities have committed violations of federal and/or state clean air laws.[1] Under the District's current rule, the District may not issue an Authority to Construct if the company has any pending Clean Air Act violations at any one of its California facilities. (Rule 1302 § (D)(5)(b)(iii).) The amendment to this Rule seeks to eliminate this requirement. As a consequence, the proposed amendments to Regulation XIII allow illegal emissions to continue even though the current rule provides a means to eliminate those excess emissions.

The proposed rule significantly increases the potential universe of projects that would no longer trigger the statewide compliance requirement currently contained in Rule 1302 Section (D)(5)(b)(iii). Such projects would no longer have to provide a certification of compliance for all of its other facilities located in California before a permit can be issued and, consequently, before that company can proceed with its project. Therefore, the incentive for companies to achieve compliance at their facilities is gone. As a result, any existing illegal emissions continue until the company is otherwise ordered to remedy them in some other forum.

[1] Environmental Working Group, Above The Law: How California's Major Air Polluters (Still) Get Away With It, July 29, 2004.

1644-066a

IV. Changes to Baseline and Use of PALs Increases the Number of Projects That Are Not Subject to Statewide Compliance Requirement

The first step in deciding whether NSR requirements apply to a proposed modification of an existing source is to determine the baseline of a source's emissions prior to the proposed modification. Any future emissions increase resulting from the proposed modification must be measured against this baseline or Historical Actual Emissions ("HAE"). At present, Rule 1304 Section (D)(2) specifies HAE as the source's verified actual emissions averaged from the two consecutive years of operation prior to application for a new project. (Rule 1304 § (D)(2)(a)(i).) By contrast, the newly proposed Rule 1310 Section (E)(2)(b)(i)(a), which relies on the baseline defined in the EPA's revised NSR rule (and which will be used to determine whether a company has to provide a certification of statewide compliance), allows a source to calculate an emission increase due to a proposed modification by comparing emissions after the modification to the highest average emissions during a consecutive 24-month period over the past 10 years. (40 C.F.R. § 51.165((a)(1)(xxxv)(B).) **This would allow sources to choose the average of the two worst-polluting consecutive years in the past decade, irrespective of whether they are typical of current emissions.**

In addition, the proposed Rule 1310 Section (F) allows facilities to use such artificially inflated emission levels not just for individual emission sources (*e.g.*, boilers, furnaces, flares), but also as the basis for determining whether a proposed project would increase facility-wide emissions. Specifically, Rule 1310 Section (F) allows facilities to use a "plantwide applicability limit" or "PAL" as the basis for determining whether a project constitutes a "Federal Major Modification." This allows a company to establish a "bubble" around the entire facility. Thus, in addition to the above discussed baseline issue, a PAL exemption allows companies too much discretion in calculating their own emissions levels.

Over time, facilities in the Mojave Desert air basin (and elsewhere throughout the state) have had to reduce their pollution through the implementation of new pollution control measures and through modernization and replacement projects that triggered NSR and its requirement to implement best available control technologies. The use of PALs allows companies to disregard these requirements in favor of decade-old plantwide emissions levels, which include emissions from old equipment with no or out-dated emissions controls. Such a scheme completely eviscerates the Clean Air Act's technology-forcing mission.

1644-066a

The practical impact of these provisions is that many modifications that would be considered "major" under the District's current rules would not be considered "major" under the rule change because it allows sources to use an artificially inflated decade-old historic baseline as the PAL instead of current actual or permitted emissions.

For example, say Company X has several facilities located in the Mojave Desert air basin. At Facility A, which is located in an ozone attainment area, current NOx emissions levels are 695 tons per year ("ton/year"). The company applies for a District permit to construct for an expansion project that would increase the facility's NOx emissions by 175 ton/year. Under the District's current rule, this project triggers District NSR requirements because it would exceed the District's major modification significance threshold for net NOx emissions increases in an ozone attainment area of 40 ton/year. (*See* Rule 1301 § DDD; for a discussion of major modification significance thresholds for NOx emissions increases in non-attainment areas, *see* infra. Section VI.) However, in the years 1998 and 1999, Facility A had plant-wide average NOx emissions of 988 ton/year, 293 tons of NOx per year more than its current emission level. The company proposes to use this historic emissions level as its PAL. Therefore, any modifications would be measured against this historic PAL of 988 ton/year of NOx emissions.

The proposed expansion project would increase NOx emissions from currently 695 ton/year by 175 ton/year to 870 ton/year. The project would not be considered a "Major Federal Modification" because it would not increase the facility's emissions above its PAL of 988 ton/year of NOx emissions. In other words, because the project would increase the facility's emissions to less than the highest average 24-month plant-wide emission level within the past decade, it would not be considered a federal major modification under the new regulation. The inset figure below illustrates this concept.

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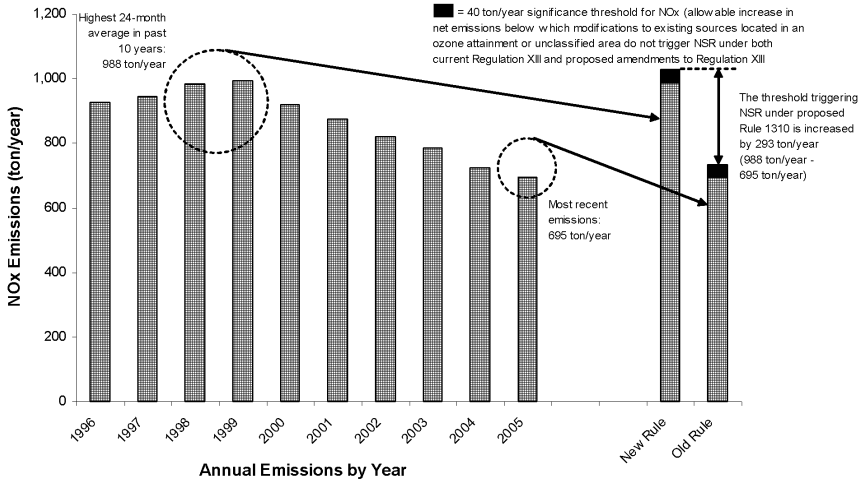
Hypothetical case for modifications at Company X's Facility A, illustrating baseline NOx emissions calculations under the MDAQMD's current Regulation XIII and the proposed amendments to Regulation XIII*



* Adapted from Environmental Integrity Project and Council of State Governments/Eastern Regional Conference, Reform or Rollback? How EPA's Changes to New Source Review Could Affect Air Pollution in 12 States, October 2003.

Thus, Company X could obtain permits for a number of modifications at Facility A without ever triggering the new "Federal Major Modification" thresholds, thereby incrementally increasing the facility's emissions level until the highest average 24-month emissions level in the past decade plus the NSR significance threshold major modifications for NOx is exceeded (988 ton/year + 40 ton/year = 1028 ton/year). In other words, Facility A could potentially implement a number of projects that increase its facility-wide NOx emissions by up to 293 ton/year (1028 ton/year – 695 ton/year – 40 ton/year) without triggering NSR requirements.

This example can be applied to a large number of companies as well as other criteria pollutants. Therefore, one consequence of the implementation of the proposed amendments to Regulation XIII is an increased number of projects that

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are no longer considered "major" modifications and therefore no longer require a statewide certification of compliance of all facilities operated by one company.

V. Eliminating Statewide Certification for Projects That Are Not "Major Modifications" Eliminates Incentives to Companies to Remedy Clean Air Act Violations At Other California Facilities

As discussed above, companies with several facilities in California would no longer have to demonstrate statewide compliance of facilities for this increased universe of projects that are not considered "federal major modifications." For example:

Assume Company X operates a different facility, Facility B, located in an air district in California other than Mojave Desert, which has a number of unresolved violations of the Clean Air Act that result in significant illegal emissions of NOx of 250 ton/year. The current Mojave Desert Air District requirements prohibit the proposed expansion project at Company X's Facility A because the company cannot certify that all of its facilities in California are in compliance with the Clean Air Act. (District Rule 1302(D)(5)(b)(iii).) The current District requirement forces Company X to remedy all of its violations at Facility B (and all of its other California facilities) before it can move forward with the proposed Facility A expansion project. The proposed amendments to Regulation XIII, on the other hand, allow Company X to construct and operate its expansion project at Facility A despite the illegal 250 ton/year NOx emissions at Facility B.

In case of unresolved Clean Air Act violations, which are ubiquitous, removal of the requirement for statewide compliance at all facilities would remove a major incentive for these companies to comply with the law.

VI. Increasing the Significant Emissions Increase Thresholds for NOx And VOC in Ozone Non-Attainment Areas from 25 to 40 Tons Per Year Reduces the Number of Projects That Are Considered "Major Modifications"

The District's current significant emissions increase thresholds for determining whether a project is considered a "major modification" and, thus, triggers NSR requirements, are emissions increases of ozone precursors (VOC and NOx) of 40 ton/year for facilities located in ozone attainment or unclassified areas and **25 ton/year in severe ozone non-attainment areas**. (Rule 1301 (DDD).)

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The District's newly proposed significance thresholds for determining a major modification triggering NSR are VOC and NOx emissions increases of 40 ton/year within an attainment or unclassified area and **40 ton/year within an ozone non-attainment area, 15 ton/year more than under the current rule**. (Rule 1310 (D)(2).)

The Mojave Desert air basin is classified as a severe ozone non-attainment area. Consequently, under proposed Rule 1310, any project would be permitted to increase ozone precursor emissions by 40 ton/year without triggering NSR requirements, 15 ton/year more than under the current rule. As discussed in section V above, because fewer projects would be considered "major modifications," companies would be less frequently required to demonstrate statewide compliance, and, consequently, ozone precursor emissions would increase.

VII. Conclusion

The District's proposed amendments to Regulation XIII would authorize PALs that would allow companies to increase emissions, whether through new units or modifications, as long as ten-year-old pollution levels plus the significance thresholds for "major" modification are not exceeded. The proposed amendments to Regulation XIII also allow companies to use decade-old emissions to artificially inflate the baseline used to calculate "an emission increase" associated with a modification project. Lastly, the amendments increase the federal major modification thresholds for ozone precursor emissions from facilities in severe ozone non-attainment areas. Because of this added flexibility afforded by the proposed amendments to Regulation XIII, a modification is less likely to be determined "major" compared to the District's current NSR requirements. This increases the number of potential projects that are no longer considered "major" and therefore no longer trigger the NSR requirement for statewide certification of compliance. The proposed amendments to Regulation XIII exempt these projects from demonstrating statewide compliance.

1644-066a

Because S.B. 288 bars the District from lawfully adopting Regulation XIII as proposed, CURE urges the District's Governing Board to reject the rule amendments in their entirety.

Sincerely,

Gloria D. Smith

GDS:
cc: Karen Nowak
k2nowak@mdaqmd.ca.gov

1644-007a

Responses to Comments, Adams, Broadwell, Joseph & Cardozo of April 26, 2006

Comment 3-1: Changing the requirement of statewide certification to only Federal major Modifications combined with the Federal Significance Threshold will result in fewer facilities being required to submit such certification and thus is a violation of the provisions of Senate Bill 288.

Response: While the District does not agree that this proposed change would be in violation of the provisions of H&S Code §§4500 et seq. (aka SB288 of 2000) the District does understand that this is a point which is currently disputed and which will in all likelihood be litigated at some point in the near future. Given this uncertainty the District has chosen to retain the current applicability of the statewide certification requirement until such a time as this issue has been resolved.

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STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
AIR RESOURCES BOARD

P. O. Box 2815
Sacramento, California 95812

May 15, 2006

Transmittal
of
ARB Staff Rule Review Comments

To: Mr. Eldon Heaston, Executive Director
Mojave Desert Air Quality Management District
Telephone Number: (661) 723-8070
e-mail: eheaston@mdaqmd.ca.gov

From: Dave Brown, (916) 324-1129
e-mail: dabrown@arb.ca.gov

The following rules, which are scheduled for a public hearing to be held by your District Board on May 22, 2006, were received by us on April 17, 2006, for our review:

1302 Procedure (for amendment)
1305 Emissions Offsets (for amendment)
1310 Federal Major Facilities and Federal Major Modifications (new rule)
1320 New Source Review for Toxic Air Contaminants (for amendment)

We have reviewed the rules and have the comment regarding rules 1302 and 1310 on the following page. This is a repeat of a comment we submitted earlier in our letter dated March 22, 2006. We believe that our comment is important to the effectiveness and enforceability of the rules.

On April 17, 2006, Ms. Liz Ota of the Regulatory Assistance Section discussed our comment with Ms. Karen Nowak of your staff. Ms. Ota also e-mailed a list of several typographic errors to Ms. Nowak on that day. Those errors are not included in these formal comments.

If you have any questions about our comment, please contact Ms. Kitty Howard, Manager of the Regulatory Assistance Section, at (916) 324-1362.

Rule review comments are on the following page

Date: May 15, 2006

Air Resources Board Staff Comments on
Mojave Desert Air Quality Management District
Proposed Rules 1302 and 1310

Rule 1302 Procedure

and

Rule 1310 Federal Major Facilities and Federal Major Modifications

Various proposed rule changes that have the effect of reducing the number of sources that are required to provide a Statewide compliance certification may be challenged regarding whether such changes are allowed under Senate Bill 288. The Air Resources Board recently received a petition challenging a similar provision adopted by the San Joaquin Valley Unified Air Pollution Control District. The District may wish to consider excluding these provisions from its rules until such time that there is a clear determination regarding the coverage of Statewide compliance certification under Senate Bill 288.

Responses to Comments, CARB Letter of May 15, 2006

Comment 4-1: Proposed changes in statewide certification may violate SB288.

Response: Please see response to Comment 3-1.

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Karen Nowak

From: Burns, Mark A Mr DPW [mark.burns2@irwin.army.mil]
Sent: Wednesday, June 28, 2006 2:32 PM
To: Karen Nowak
Subject: New Draft MDAQMD Regulation XIII
Signed By: There are problems with the signature. Click the signature button for details.
Attachments: Rule Amendments and Adoption.doc

Karen, how are you? Attached are my comments and/or responses after review of the proposed amendments and adoption of the new rule.

Thanks

Mark A. Burns
Air Quality Program Manager
Directorate of Public Works
Bldg. 602
Fort Irwin, CA 92310
Phone: (760) 380-3737
Fax: (760) 380-2677

" Promote Clear Skies"

8/8/2006

Rule 1310
Federal Major Facilities and Federal Major Modification

Currently, the NTC and Fort Irwin is not a major facility. Thus, this rule wouldn't apply unless we triggered major source thresholds. However, it is possible for the NTC to become a Federal Major Facility. Therefore, after my review of Rule 1310, I make the following comments:

(C) Definitions:

The definition for **facility** (any building, structure, emissions unit, combination of emission units, or installation which emits or may emit a regulated air pollutant) is absence from your listing of definitions. This definition should be listed because if not many that don't know that a facility could be a generator, a boiler or any other source may believe that the term facility strictly refers to a building or structure.

(D) (1) Federal Major Facility Threshold:

(a) Any facility that has a potential to emit a regulated NSR air pollutant in amounts greater than or equal to the listed thresholds. In terms of triggering any NSR pollutant (criteria) threshold, is the rule referring to a **single** air emission source i.e., a generator large enough to emit an NSR air pollutant in an amount above or equal to threshold and not two or more emission sources who's emissions combined is equal to or above a NSR threshold?

Rule 1320
New Source Review for Toxic Air Contaminants

(B) Applicability

(B) (3) (a) (i) (ii) Under Federal Toxic New Source Review Program (Federal T-NSR) Applicability, it states this Rule shall apply to any new or reconstructed **Facility** or new or Modified Emissions Unit which emits or has the potential to emit 10 tons per year or more of any single HAP or 25 tons per year or more of any combination of HAPs.

In terms of **facility** is the rule referring to a single emission source for the 10 tons per year? For the 25 tons per year, is the rule referring to a combination of HAPs coming from a single emission source? Is NSR for air toxics handled in the same manner as NSR for criteria air pollutants where each time a permit application is submitted the emissions from the unit is calculated and added to the emissions of preexisting permitted sources?

(C) Definitions:

The definition for **facility** (any building, structure, emissions unit, combination of emission units, or installation which emits or may emit a regulated air pollutant) is absence from your listing of definitions. This definition should be listed because if not many that don't know that a facility could be a generator, a boiler or any other source may believe that the term facility strictly refers to a building or structure.

Responses to Comments, Ft. Irwin E-Mail of 6/28/06

Comment 5-1: Definition of "Facility" is absent from Rule 1310.

Response: Rule 1310 utilizes the Rule 1301 definitions unless that definition is superceded by a specific definition in Rule 1310. Therefore, the Rule 1301 definition of Facility applies.

Comment 5-2: Does 1310 trigger level in (D)(1) refer to a single emissions source?

Response: Rule 1310 (D)(1) thresholds are a Facility wide threshold. If a single emissions unit was greater than the threshold that would make the Facility a Federal Major Facility. In addition, if a combination of emissions units had combined potentials to emit over the threshold that would also qualify the Facility as a Federal Major Facility.

Comment 5-3: Is Rule 1320 (B)(3)(a) referring to single emissions source or multiple emissions sources.

Response: This portion of Rule 1320 is not proposed for amendment and has not been modified since its original adoption on September 24, 2001. This provision was derived directly from the Federal regulations and will be interpreted in accordance with those regulations. Any single emissions source (New or Modified Emissions Unit) emitting 10 tpy or more of a single HAP or 25 tpy or more of multiple HAPs would trigger the analysis. If the Facility itself is new or qualifies as "reconstructed" then the HAPs from multiple emissions units are aggregated to determine the threshold that triggers the analysis.

Comment 5-4: Definition of Facility is absent from Rule 1320.

Response: Rule 1320 utilizes the Rule 1301 definitions unless otherwise indicated. Since there is no "Facility" definition in Rule 1320 the Rule 1301 definition applies.

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Appendix "D"

California Environmental Quality Act
Documentation

1. County of San Bernardino NOE
2. County of Riverside NOE

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NOTICE OF EXEMPTION

TO: County Clerk
San Bernardino County
385 N. Arrowhead, 2nd Floor
San Bernardino, CA 92415

FROM: Mojave Desert
Air Quality Management District
14306 Park Ave
Victorville, CA 92392-2310

X MDAQMD Clerk of the Governing Board

PROJECT TITLE: Amendment of Regulation XIII – *New Source Review* (Specifically Rules 1302 – *Procedure*, 1305 *Emissions* Offsets and 1320 – *New Source Review For Toxic Air Contaminants*) and adoption of New Rule 1310 – *Federal Major Facilities and Federal Major Modifications*

PROJECT LOCATION – SPECIFIC: San Bernardino County portion of the Mojave Desert Air Basin and Palo Verde Valley portion of Riverside County.

PROJECT LOCATION – COUNTY: San Bernardino and Riverside Counties

DESCRIPTION OF PROJECT: The proposed amendments and new rule will bifurcate the new source review analysis procedure into State and Federal Components

NAME OF PUBLIC AGENCY APPROVING PROJECT: Mojave Desert AQMD

NAME OF PERSON OR AGENCY CARRYING OUT PROJECT: Mojave Desert AQMD

EXEMPT STATUS (CHECK ONE)

Ministerial (Pub. Res. Code §21080(b)(1); 14 Cal Code Reg. §15268)
Emergency Project (Pub. Res. Code §21080(b)(4); 14 Cal Code Reg. §15269(b))
X Categorical Exemption – Class 8 (14 Cal Code Reg. §15308)

REASONS WHY PROJECT IS EXEMPT: All facilities currently required to undergo the new source review analysis procedure will still be required to do so under the state component of the rule. Larger sources which are designated Federal will be required to provide an alternative site analysis in addition to the state requirements. Facilities classified as Federal Major Facilities will be able to apply for and receive a plantwide applicability limit.

LEAD AGENCY CONTACT PERSON: Eldon Heaston **PHONE:** (760) 245-1661

SIGNATURE: _____ **TITLE:** Executive Director **DATE:** _____
DATE RECEIVED FOR FILING:

NOTICE OF EXEMPTION

TO: Clerk/Recorder
Riverside County
3470 12th St.
Riverside, CA 92501

FROM: Mojave Desert
Air Quality Management District
14306 Park Ave
Victorville, CA 92392-2310

X MDAQMD Clerk of the Governing Board

PROJECT TITLE: Amendment of Regulation XIII – *New Source Review* (Specifically Rules 1302 – *Procedure*, 1305 *Emissions* Offsets and 1320 – *New Source Review For Toxic Air Contaminants*) and adoption of New Rule 1310 – *Federal Major Facilities and Federal Major Modifications*

PROJECT LOCATION – SPECIFIC: San Bernardino County portion of the Mojave Desert Air Basin and Palo Verde Valley portion of Riverside County.

PROJECT LOCATION – COUNTY: San Bernardino and Riverside Counties

DESCRIPTION OF PROJECT: The proposed amendments and new rule will bifurcate the new source review analysis procedure into State and Federal Components

NAME OF PUBLIC AGENCY APPROVING PROJECT: Mojave Desert AQMD

NAME OF PERSON OR AGENCY CARRYING OUT PROJECT: Mojave Desert AQMD

EXEMPT STATUS (CHECK ONE)

Ministerial (Pub. Res. Code §21080(b)(1); 14 Cal Code Reg. §15268)
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REASONS WHY PROJECT IS EXEMPT: All facilities currently required to undergo the new source review analysis procedure will still be required to do so under the state component of the rule. Larger sources which are designated Federal will be required to provide an alternative site analysis in addition to the state requirements. Facilities classified as Federal Major Facilities will be able to apply for and receive a plantwide applicability limit.

LEAD AGENCY CONTACT PERSON: Eldon Heaston **PHONE:** (760) 245-1661

SIGNATURE: _____ **TITLE:** Executive Director **DATE:** _____
DATE RECEIVED FOR FILING:

Appendix "E"
Bibliography

The following documents were consulted in the preparation of this staff report.

1. 42 USC 7661b
2. 40 CFR 51.165
3. 40 CFR 52.21
4. 40 CFR 70.4
5. 61. FR 38250 07/23/1996
6. 63 FR 39857 07/24/1998
7. 67 FR 80186 12/13/2002
8. 69 FR 23858 04/30/2004
9. 69 FR 23951 04/30/2004
10. 70 FR 30592 05/26/2005
11. 70 FR 44470 08/03/2005
12. State of NY vs. USEPA (D.C. Cir., 2005) 413 F.3d 3
13. State of NY vs. USEPA (D.C. Cir., 2005) 431 F.3d 801
14. San Joaquin Unified AQMD Proposed Rule 2201
15. South Coast AQMD Proposed Rule 1316

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